S. Hrg. 98-114

REAUTHORIZATION OF THE EXPORT ADMINISTRATION ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL FINANCE
AND MONETARY POLICY

OF THE

COMMITTEE ON
BANKING, HOUSING, AND URBAN
AFFAIRS
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 397

To amend the Export Administration Act of 1979

S. 407

To improve the enforcement of export administration laws, and for other purposes

S. 434

To unify the export administration functions of the United States Government within the Office of Strategic Trade, to improve the efficiency and strategic effectiveness of export regulation while minimizing interference with the ability to engage in commerce, and for other purposes

S. 979

To amend and reauthorize the Export Administration Act of 1979

MARCH 2, 16, AND APRIL 14, 1983

Printed for the use of the Committee on Banking, Housing, and Urban Affairs

U.S. GOVERNMENT PRINTING OFFICE
20 670 O WASHINGTON : 1983

S241-23

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

JAKE GARN, Utah, *Chairman*

JOHN TOWER, Texas
JOHN HEINZ, Pennsylvania
WILLIAM L. ARMSTRONG, Colorado
ALFONSE M. D'AMATO, New York
SLADE GORTON, Washington
PAULA HAWKINS, Florida
MACK MATTINGLY, Georgia
CHIC HECHT, Nevada
PAUL TRIBLE, Virginia

WILLIAM PROXMIRE, Wisconsin
ALAN CRANSTON, California
DONALD W. RIEGLE, Jr., Michigan
PAUL S. SARBANES, Maryland
CHRISTOPHER J. DODD, Connecticut
ALAN J. DIXON, Illinois
JIM SASSER, Tennessee
FRANK R. LAUTENBERG, New Jersey

M. DANNY WALL, *Staff Director*
KENNETH A. McLEAN, *Minority Staff Director*

SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY

JOHN HEINZ, Pennsylvania, *Chairman*

JAKE GARN, Utah
WILLIAM L. ARMSTRONG, Colorado
MACK MATTINGLY, Georgia
SLADE GORTON, Washington

WILLIAM PROXMIRE, Wisconsin
ALAN J. DIXON, Illinois
JIM SASSER, Tennessee
FRANK R. LAUTENBERG, New Jersey

PAUL FREEDENBERG, *Economist/International Finance*
CHARLES L. MARINACCIO, *Minority General Counsel*

CONTENTS

WEDNESDAY, MARCH 2, 1983

Page

- Opening statement of Senator Heinz — 1
- Opening statement of Senator Garn — 3
  - Time magazine article entitled "The Missing Micraligns" — 5
  - Summary of the Perkin-Elmer Micralign Case — 6
    - Bills:
      - S. 397 — 12
      - S. 407 — 25
      - S. 434 — 30
      - S. 979 — 129

WITNESSES

- Richard D. Perle, Assistant Secretary for International Security Policy, Department of Defense — 145
  - Response to written questions of Senator Garn — 192
- Lionel Olmer, Under Secretary for International Trade, Department of Commerce — 147
  - Differences of opinion in security controls — 148
  - Reducing validated export licensing requirements — 151
  - Foreign availability — 152
  - Prepared statement — 154
    - Militarily critical technologies list — 157
    - Proposals to modify export controls — 160
    - COCOM — 163
    - Interagency review process — 164
    - Foreign availability — 166
    - Commerce's enforcement of the EAA — 168
    - Results achieved — 170
  - Response to written questions of Senator Garn — 198
- William Schneider, Under Secretary for Security Assistance, Department of State — 172
  - Soviets obtain western technology illegally — 172
  - Strengthen and update embargo lists — 173
  - Prepared statement — 176
    - National security controls — 179
    - Short supply — 180
    - Foreign policy controls — 180
- Panel discussion:
  - Faulty licensing and espionage — 181
  - U.S. loss of ability to produce — 183
  - Restrictive list far too large — 185
  - Violating U.S. reexport licensing strictures — 187
  - Transferring business abroad — 189
  - End-products item of contention — 191
  - Should DOD make initial decision on high-tech items? — 191
  - Need for Japanese cooperation — 194
  - Jumping ahead of the line treatment — 195
  - "Base Canard" — 196
- Paul Tsongas, U.S. Senator from the State of Massachusetts — 206
  - Mindless decisionmaking — 206
  - Suggestion to improve legislation — 214
  - Prepared statement — 209

Page

- Vico Henriques, president, Computer & Business Equipment Manufacturers Association, Washington, D.C ... 215
  - Need for National security export controls ... 216
  - Prepared statement ... 218
    - I. Introduction ... 218
    - II. History ... 220
    - III. Problems ... 223
    - IV. National security controls ... 230
    - V. Conclusion ... 243
    - Comprehensive operations license ... 244
  - Response to written questions ... 247
- Gerald Gleason, vice president, the Foxboro Co., Foxboro, Mass.; representing Scientific Apparatus Makers Association ... 248
  - Unilateral controls ineffective ... 249
  - Prepared statement ... 252
    - Summary of recommendations ... 251
    - S. 397 ... 255
    - National security controls ... 257
    - Export licensing to friendly countries ... 258
    - Export licensing of products containing microprocessors ... 259
    - Unilateral export controls ... 264
    - Technology transfer ... 267
    - Compliance ... 270
    - Conclusion ... 277
- James A. Gray, president, National Machine Tool Builders Association, Washington, D.C ... 279
  - Import penetration ... 279
  - Proposed Office of Strategic Trade ... 281
  - Prepared statement ... 283
    - I. Introduction ... 283
      - A. The U.S. machine tool industry today ... 284
      - B. Machine tool imports: penetration on an unprecedented scale ... 286
    - II. The ability to enter and remain in the world export market is vitally important to American manufacturers—including machine tool builders. However, U.S. export performance has sharply eroded in recent years ... 289
      - A. The significance of a strong export market ... 289
      - B. Export promotion activities sponsored by NMTBA ... 290
      - C. The export outlook for the United States ... 292
      - D. The export outlook for our foreign competitors ... 293
      - E. The decline in U.S. export performance ... 295
    - III. The Export Administration Act ... 296
      - A. Administration of the act ... 297
      - B. National security controls ... 298
      - C. Commodity control list ... 304
      - D. Foreign availabilty ... 306
      - E. Foreign policy controls ... 307
      - F. Treaty status of COCOM ... 309
      - G. Enforcement of the act ... 309
    - Conclusion ... 310
    - Exhibits:
      - I. U.S. machine tool import share ... 312
      - II. U.S. machine tool balance of trade ... 313
      - III. U.S. machine tool imports ... 314
      - IV. Japanese export statistics ... 315
      - V. U.S. machine tool imports 1977 and 1981 ... 316
      - VI. Share of world machine exports ... 317
      - VII. U.S. share of total imports of machine tools by Eastern bloc countries ... 318
      - VIII. Machine tool imports of Eastern bloc ... 319
      - IX. Exports of NC machine tools to the U.S.S.R., 1979-81 ... 320
  - Response to written questions from Senator Garn ... 321
- Allen R. Frischkorn, assistant vice president, GTE Corp., Washington, D.C.; representing the Electronic Industries Association ... 322
  - Room for decontrol ... 322
  - Increasing technology controls on our allies ... 323
  - Prepared statement ... 325
    - National security controls ... 326

Allen R. Frischkorn, assistant vice president, GTE Corp., Washington, D.C.; representing the Electronic Industries Association—Continued
Prepared statement—Continued Page
Foreign policy export controls 335
Antiboycott provisions 340
Proposals for administrative reform 341
Conclusion 344
Response to questions of Senator Heinz 368
Response to written questions of Senator Garn 370
J. A. DeRose, program director of public affairs, IBM, Washington, D.C.; representing Semiconductors Industries Association 345
Problems posed by foreign availability 345
Create a new comprehensive operations license 346
Prepared statement 348
Introduction 348
Principles for effective national security controls for the transfer of technology 349
A new licensing mechanism—the comprehensive operations license 351
A legislative basis for the comprehensive operations license 356
Conclusion 357
Response to questions of Senator Gajn .....
Panel discussion:
Divided responsibility works well 361
Enforement controls to Customs Service 363
Production in the Soviet Union 364
Allies selling to Communist countries 365
Shortening processing time for licenses 366
Questions for Industry panel from Senator Garn 373

ADDITIONAL MATERIAL RECEIVED FOR THE RECORD

American Electronics Association, statement of George M. Heenan 375
Theodore L. Thau:
Biographical sketch 390
Comments on:
Allen Frischkorn statement for EIA 391
Computer & Business Equipment Manufacturer Association (CBEMA) 407
Semiconductor Industry Association statement of March 2, 1983 425
Scientific Apparatus Makers Association (SAMA), statement of Gerald Gleason, March 1983 426
National Machine Tool Builders' Association (NMTBA), March 1983 435
American Electronics Association, March 1983 445
Letter to Senator Garn 448
SAMA, letter indicating specific instances of lengthy licensing delays resulting in lost export business 450
SAMA response to written questions of Senator Garn 454
MARCO, letter to Senator Gorton re: obstacles to exporting faced by small business, from Charles Hart, senior vice president 456
American League for Exports and Security Assistance, Inc., statement of Armistead I. Selden, president 462

WEDNESDAY, MARCH 16, 1983

Opening statement of Senator Heinz 469
Opening statement of Senator Dixon 470

WITNESSES

Lawrence McQuade, senior vice president, corporate administrator, W. R. Grace & Co.; representing the Emergency Committee for American Trade 472
Reputation as an unreliable supplier 472
Problem of extraterritoriality 472
Sanctity of contracts 474
Prepared statement 475
General comments 475
Specific recommendations 476
Prepared statement of the Emergency Committee for American Trade 479

Lawrence McQuade, senior vice president, corporate administrator, W. R. Grace & Co.; representing the Emergency Committee for American Trade—Continued
  Prepared statement of the Emergency Committee for American Trade—Continued

Page

- Introduction 479
- Summary of basic recommendations 479
- General comments 480
- Foreign policy controls 480
- Implementations of the EAA 484

Erskine C. Chapman, executive vice president, Caterpillar Tractor Co.; representing the Business Roundtable 486
- Prepared statement 486
  - Recommendation 1:
    - The Export Administration Act should require certain procedures be followed 487
  - Recommendation 2:
    - Existing criteria for imposing foreign policy controls should be strengthened 487
  - Recommendation 3:
    - Export controls for foreign policy purposes should not have retroactive application 487
  - Recommendation 4:
    - Export controls for foreign policy purposes should not apply to foreign nationals 488
- Response to written questions of Senator Heinz 489

Bernard J. O'Keefe, chairman and chief executive officer E.G. & G., Inc.; representing National Association of Manufacturers 491
- Fear of overregulation 491
- Impact of overdelegation of powers 492
- Prepared statement 493
  - U.S. industrial competitiveness 495
  - Reliability of U.S. companies as suppliers 498
  - Table 1—Examples of U.S. trade being turned "on and off" under U.S. export control laws 499
  - Impact of controls on foreign subsidiaries of U.S. firms 502
  - Boost to foreign competitors 504
  - Foreign policy controls 505
  - Conclusion 513
  - Letter to Malcolm Baldrige, Secretary of Commerce, U.S. Department of Commerce from Alexander B. Trowbridge, president, NAM 514

Arthur T. Downey, Esq., partner, Sutherland, Asbill & Brennan; representing the Chamber of Commerce of the United States 519
- Problem with foreign policy controls 519
- Presidential exemptions 521
- Prepared statement 523
  - Realities of the present international economic system 524
  - Long-term cost to the United States of unilateral export controls 525
  - Foreign policy export controls 528
  - S. 397, Export Administration Act amendments of 1983 530
  - Conclusion 533

James H. Giffen, chairman, New York District Export Council; vice pesident for corporate development, Armco, Inc 534
- Prepared statement 535
  - National security export controls 537
  - Foreign policy export controls 539
  - Recommendations 542
  - Conclusions 545

J. W. Neely, president, Petroleum Equipment Suppliers Association; chairman, Smith International 546
- Prepared statement 547
  - Executive summary 547
  - Trade sanctions and the bottom line: learning from the future 548
  - What are the costs? 549
  - What are the risks? 552
  - What are the benefits? 554
  - The alternatives 555
  - Recommendations 556

J. W. Neely, president, Petroleum Equipment Suppliers Association; chairman, Smith International—Continued
  Prepared statement—Continued   Page
    Compilation of non-U.S. manufacturers of petroleum equipment 561
Panel discussion:
  Pipeline equipment to the Soviet Union 686
  National security control problems 687
  Quarterly reports to assess foreign availability 689
  Sanctity of contracts 693

Additional Material Received for the Record

The Rand Corp., response to written questions of Senator Heinz from Charles Wolf, Jr. director, International Economic Policy Program 694
CRL Laurel Industries, comments submitted for the record by Carl Lambrecht, general manager 698
U.S. Council for International Business, comments submitted for the record by David L. Grove, president 704
The Williams Co., comments on S. 397 by Joseph H. Williams, chairman of the board 713

THURSDAY, APRIL 14, 1983

Opening statement of Senator Heinz 715
Opening statement of Senator Garn 717

WITNESSES

Kenneth Dam, Deputy Secretary, Department of State 721
  Prepared statement 721
    Foreign policy controls—section 6 of the act 721
    Administration amendments to section 6 722
    Comments on other proposals 723
    Short supply controls—section 7 of the act 724
    Conclusion 724
Lionel Olmer, Under Secretary, Department of Commerce 725
  Prepared statement 726
    Export monitoring mechanism 737
    Export control mechanism 737
    Section 7(c)—the petition procedure 738
    Section 7(d)—crude oil 739
    Section 7(h)—barter agreements 740
    Section 7(i)—unprocessed red cedar 740
    Section 7(j)—export of horses 740
    Section 7(e) and 7(f) refined petroleum products 741
Paned discussion:
  Contract sanctity 742
  Foreign policy controls 744
  Import restrictions violate international obligations 747
  National security controls 748
  Proposed contract sanctity provision 750
  Cost savings passed on to consumers 752
  CoCom needs to be strengtened 753
  U.S. paying cost of Japanese defense umbrella 754
  Multilateral foreign policy controls 756
  Notification to Congress 5 months late 758
  Applying import sanctions 759
  Response to CoCom violations 761
  Responsibility of enforcement of license restriction 764
Howard Marlowe, associate director, department of legislation, AFL-CIO, accompanied by Martin Cooper, director of research, Consumer Energy Council; and Jack Goldstein, vice president and economist, overseas shipholders group 766
  Restrictions on export of Alaska oil 766
  Prepared statement 769
    Organizations involved in the coalition to keep Alaska oil 775
  Response to written questions of Senator Heinz 776
  Letter to Senator Heinz with comments on the value of the dollar and the yen 844
  Additional comments by Howard Marlowe 1172

Page
Edward L. Merrigan, counsel, National Association of Recycling Industries, Inc 787
  Recommendation for repeal of section 7(c) 787
  Prepared statement 790
Irving M. J. Kaplan, vice president—secretary, Copperweld Corp., Pittsburgh Pa.; representing the Ferrous Scrap Consumers Coalition, accompanied by David A. Hartquist, Esq., Collier, Shannon, Rill & Scott, FSCC legal counsel 798
  Prepared statement 799
    Timely monitoring 801
    Criteria for monitoring 803
    Criteria for controls 804
  Dealing with short-supply problems 806
Steven Kaplan, treasurer, M. S. Kaplan Co., Chicago, Ill.; first vice president, Institute of Scrap Iron & Steel, Inc., accompanied by Dr. Herschel Cutler, executive director of the institute 808
  Prepared statement 809
    Legislative recommendations 818
    Conclusion 827
    Memorandum, re: judicial review of determinations to institute short supply monitoring or controls pursuant to section 7 of the Export Administration Act of 1979 828

Panel discussion:

  Export Alaskan oil? 842
  Metal recycling 845
Eugene J. Milosh, executive vice president, American Association of Exporters and Importers, New York, accompanied by Andrew S. Krulwich, Esq., Wellford, Wegman, Krulwich, Gold & Hoff, and Suzi Evalenko, American Association of Exporters and Importers 845
  Prepared statement 849
  Executive summary on the renewal of the Export Administration Act 856
Richard S. Hoffman, Esq., law offices of George R. Tuttle, Washington, D.C. 923
  Prepared statement 923
    Voluntary disclosure procedures 924

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

The American Maritime Association 928
Minnesota Law Review, article entitled "Linking Trade to Political Goals: Foreign Policy Export Controls in the 1970's and 1980's," by Kenneth W. Abbott 935
Sperry Corp., letters to Senator Garn and Senator Heinz from G. G. Probst, chairman and chief executive officer 1087
International Customs Service, Inc., letter to Senator Heinz from Robert L. Waggoner, president 1090
General Aviation Manufacturers Association, statement of Edward W. Stimpson, president 1091
National Marine Engineer's Beneficial Association, testimony by Jesse M. Calhoon submitted for the record 1097
Maritime trades department, AFL–CIO, statement of Frank Drozak, president 1110
Maritime Institute for Research and Industrial Development (MIRAID), statement submitted for the record by Julian H. Singman, president 1117
Northville Industries Corp., statement of Harold P. Bernstein, chairman 1124
The Association of Data Processing Service Organizations, statement submitted for the record 1133
National Foreign Trade Council, Inc., statement submitted for the record by Richard W. Roberts, president 1137
Aerospace Industries Association of America, Inc., statement of Karl G. Harr, Jr., president 1143
American Institute of Merchant Shipping 1164
Cargill, position paper by Robert R. Fahs 1173
Confederation of British Industry, statement by Kenneth Edwards 1181
Brass & Bronze Ingot Institute, statement by Norman Lavin, president 1195
State of Alaska, Office of the Governor, Bill Sheffield, statement submitted for the record 1199
The Institute of Electrical and Electronics Engineers, Inc. views submitted for the record 1202
IKER, Inc., additional recommendations submitted for the record 1208

REAUTHORIZATION OF THE EXPORT ADMINISTRATION ACT

WEDNESDAY, MARCH 2, 1983

U.S. SENATE, COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS, SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY,
Washington, D.C.

The subcommittee met at 10:30 a.m., in room SD-538 of the Dirksen Senate Office Building, Senator John Heinz (chairman of the subcommittee) presiding.

Present: Senators Heinz, Garn, Gorton, Proxmire, and Lautenberg.

Also present: Senator Paul Tsongas.

OPENING STATEMENT OF SENATOR HEINZ

Senator HEINZ. Today we mark the second in the series of hearings which this committee will hold to consider various aspects of the Export Administration Act, which expires this September 30.

Today we're going to focus in on and consider national security controls and our relations with the other major high-technology producers within Cocom, which is comprised of our NATO allies and the Japanese.

This is a legislative hearing, and the witnesses will not only be commenting on the administration of national security controls, they will also be commenting on the legislative proposals which Senator Garn, Senator Nunn, and I have submitted for consideration.

As I have said previously, all the bills complement one another, and I am hopeful that this committee as it moves forward toward markup can find a way to achieve the objectives of all three bills in one single bill.

Indeed, I've already incorporated a number of Senator Nunn's proposals into my bill, and Senator Garn has indicated sympathy for those suggestions, as well.

With regard to national security controls, Senator Garn and I share the same concerns about the dangers of inadequate licensing practices, and lax enforcement.

Our solutions, at least at this time, however, take a separate path.

Senator Garn believes that a major source of the problem lies in the licensing process, and in the low-priority export controls are given within the Commerce Department. Hence, he proposes an organizational solution.

In contrast, I believe that the primary source of the problem lies in enforcement, rather than licensing. And the vast majority of our problems with regard to national security controls could be solved with a more vigorous and efficient enforcement effort.

Part of this problem is due, in my judgment, to the rapid pace of development of high technology and high-technology products.

Our licensing and enforcement structure has simply not kept up with that. Another part of the problem regarding high-technology transfer to the Soviet Union and its allies, comes from the weak and ineffectual nature of the Cocom organization.

Time and again, we hear reports of our allies refusing to cooperate or dragging their feet in response to our efforts to tighten up high-technology transfers.

Efforts are currently underway to negotiate new, tougher multilateral restrictions within Cocom, and we'll hear a progress report on that today from Dr. Schneider of the State Department.

I would like to be optimistic, but in the short-run, I'm not very optimistic that we can persuade our allies to cooperate in these very meritorious efforts to stem technology flow to the East, at least not within the current structure of Cocom.

That is one of the reasons why I proposed in my bill that the administration enter into negotiations to strengthen Cocom and raise it to treaty status.

In the absence of such strengthening, I fear the allies will continue to take advantage of our own unilateral controls to increase their market share.

And then I fear that not only our national security interests, but our economic competitiveness will thereby suffer. It is within that context that I have proposed an increased capability for foreign availability assessment.

Such capability has been sadly lacking at the Commerce Department, despite the fact that the 1979 act clearly mandated it, and indeed earmarked funds for that purpose.

I can well understand the frustration of American companies whose officers witness Cocom prescribed technology being sold freely to and within the Eastern Bloc, when they are unable to get licenses for similar technology from the U.S. Government.

Increased foreign availability, assessment capability, would be a first step toward a solution of that problem. If Cocom has prohibited the sale of certain products and technologies to Communist destinations, then we should be able to apply strong diplomatic pressures to get our allies to stop those kinds of sales.

The absence of that kind of leverage sometimes has the effect of rendering our own national security controls meaningless; punishing only our own corporations, while the Soviets obtain any desired technology and our trade competitors gain still another advantage.

In my judgment, the day is long gone when we can afford such empty, meaningless symbolism.

Finally, we will also be considering today the militarily critical technologies list, which was mandated by the 1979 act. To date, it has not been used in the way that the 1979 act's authors, myself included, intended.

It's far too long and cumbersome. If we try to control everything, we are going to be unable to control the truly critical technology.

In the process, we will do great harm to West-West sales and technology transfer, without having an appreciable effect on restricting East-West technology transfer.

It should be remembered that the U.S. has only 1 percent of the Eastern European market for manufactured goods. And an even smaller percentage, small though that may be, of the high-technology market.

America's export future lies in the West, and among the richer, less developed or newly industrialized countries.

The U.S. Government need not imperil that trade in the name of controlling the flow of technology to the East. This problem is addressed in my bill through the proposed increased use of the qualified general license for both goods and technology, as a means of eliminating what the GAO described as the meaningless paper exercise which accompanies some 35,000 validated licenses processed each year.

If we can get a better handle on the flow of technology among Western nations, while cutting down on needless and counterproductive paperwork, then we will have significantly improved the export control process.

This process that I have proposed is somewhat analogous to the comprehensive operations license proposed by some members of the high technology community.

I hope that our witnesses today will particularly comment on this proposal, and the way it's been drafted in S. 397.

Before we ask our witnesses to testify, I'd like to yield to my colleague, Senator Garn, chairman of the committee, for any opening remarks he'd care to make.

OPENING STATEMENT OF SENATOR GARN

Senator GARN. Thank you very much, Senator. First let me commend you as chairman of the subcommittee for holding this series of hearings. Both of us, in our entire Senate careers, have been very concerned about this area.

We do need to renew or reauthorize the Export Administration Act. Time is running out, so I really appreciate the fact that you have taken the bit in your mouth and proceeded rapidly early in the session to hold these hearings.

As a preface to today's hearings, I'd like to read a quote from a recent article by Air Force Maj. Gen. Doyle E. Larson, Commander of the Electronic Security Command.

He makes an excellent summary of some of the gains the Soviets have obtained militarily through the use of Western goods and technology:

> In 1970 the Soviet Union was behind in almost every aspect of military technology from strategic weapons down to light vehicles. It did not have a single successful attack-fighter design, and the fire control systems for its tanks were grossly inferior. Its anti-tank missiles were primitive as were its air-to-air missiles, avionics and aircraft guns. It lacked modern lightly armored vehicles, relied on towed artillery, had no modern helicopters in combat units, and had no modern communications in its land forces. Today . . . virtually all of the above defects have either been eliminated or compensations made.

I came to the Senate in 1974, and each year, as we debated the defense budget, I have seen how dramatically expenditure demands have increased in order to cope with these Soviet defense advances.

This is truly an area where an ounce of prevention is worth a pound of cure. Today we will learn how billions of dollars in defense costs could have been avoided by an effective export control system.

It seems to me that it's simply foolish for anyone to criticize defense spending, and then refuse to work toward the establishment of an effective system of export control. Seventeen of my colleagues and I have proposed a solution to this dangerous problem. I'd like to make another quote from General Larson's article:

> No matter what course of action the current administration takes, the program must not be allowed to flounder on an interagency basis. Someone has to be in charge with authority to cut across departmental egos.

This is exactly what our bill would do by establishing a high-level Office of Strategic Trade, whose head would be a member of the National Security Council.

While giving the institutional high priority to the system and the authority to cut across interagency rivalries, the bill would simultaneously end the current situation where the fox is left in charge of the chicken coop.

On February 3, the full committee held a hearing on the Commerce Department's fulfillment of its role under the Export Administration Act.

The hearing showed conclusively that the Commerce Department's efforts are lacking now, have been that way for 30 years, and are unlikely to be sufficiently improved to any lasting way or degree in the future.

That should not be surprising to anyone. No more should we expect the Commerce Department to do an adequate job of enforcing export controls than we would expect them to do an adequate job in enforcing our antitrust statutes.

The Commerce Department is our advocate for business and trade, and should be. When we mix with that the responsibility for regulating business and trade we get a mix of conflicting authority that allows the Department to fulfill neither of its responsibilities well.

We get bad government. During the last hearing, both Senator Heinz and I focused on the total failure of the Commerce Department, for example, to fulfill its legal responsibilities for the assessment of the foreign availability of controlled goods and technologies. In its annual report on export administration for fiscal year 1982, the Commerce Department reported that not a single license was granted on the basis of foreign availability.

How we can expect to conduct Cocom negotiations without an adequate assessment of foreign availability is beyond my understanding. I also wonder how many of the more than 70,000 export license applications required by the Commerce Department last year would have been unnecessary had foreign availability been adequately assessed.

The explanation by the Commerce Department for this total failure was that Congress failed to appropriate funds for foreign availability assessment. Let me point out, first, that the banking committee authorized those funds, and, second, we're talking about relatively small sums of money. Little more than a million dollars. I have never known an agency yet that failed to obtain such small sums for what it deemed to be a high priority, either through lobbying the Appropriations Committees, or through the transfer of funds from other operations.

Since the February hearing two more examples have come to my attention, reinforcing my conviction that it is in our national interest to remove export administration from the Commerce Department.

The February 14 edition of Time magazine carried an article outlining how high-technology equipment subject to U.S. export controls was diverted to the Soviet bloc through the licensing and enforcement failures of the Commerce Department.

Mr. Chairman, I would ask that a copy of the Time magazine article, along with a summary by committee staff, be included in the hearing record.

[The information follows:]

[From Time Magazine, Feb. 14, 1983]

The Missing Micraligns

In Switzerland, customs officials called the matter "embarrassing." In Washington, the Commerce Department would not confirm that the case was under investigation, but expressed grave concern. In Moscow, KGB officials were believed to be jubilant over a victory on one of the newest frontiers of espionage: the theft of Western industrial technology.

The cause of that fuss was the disappearance of two projection mask aligners (price: $250,000 each) made by Perkin-Elmer Corp. of Norwalk, Conn. The automobile-size machines, called Micralign 200s by Perkin-Elmer, are used in the manufacture of microcircuitry for everything from digital watches to missile guidance systems. Designed ten years ago, the equipment has since been superseded by more advanced models. Nonetheless, the Commerce Department has it on a list of equipment banned for export to Iron Curtain countries. Commerce analysts estimates that 70 percent of computer microchips made in the Soviet Union are turned out on Western equipment, most of it shipped there illegally.

Perkin-Elmer certainly had no intention of doing that last March, when the company received a routine purchase order for the machines from Favag S.A., a medium-size electronics company in the Swiss watchmaking town of Neuchâtel. Recalls Perkin-Elmer Vice President James P. Gregory: "We are fully aware of the importance of this equipment. We did not know Favag, so we reported the order to the U.S. Customs, to the Commerce Department and to the FBI." After months of investigation by U.S. agencies, the sale was approved by the Commerce Department; the Micraligns were shipped to Switzerland in August.

As soon as the machines arrived, Favag resold them to another company. Eler Engineering, based in Geneva. Says Marc Villoz, a Favag director: "We pocketed a commission, and Eler got the machines. It's normal commercial transaction, and we don't know or care where those machines are right now."

The Micraligns were definitely not installed in Eler's Geneva offices. The company has no offices. Like hundreds of firms taking advantage of Switzerland's secretive banking and tax laws, Eler was represented in Geneva by a local lawyer, who has since cut her ties with the company. Eler is, in fact, run from Paris by Joe Lousky, a businessman specializing in import-export arrangements. Says Lousky of the Micralign deal: "This is a highly complicated affair. I have absolutely no way of knowing where those machines are right now." TIME has learned that the Micraligns were shipped to Paris soon after arriving in Switzerland. Then they vanished.

Swiss authorities admit that the case of missing Micraligns is not unusual. Switzerland, along with Finland and Austria, is among the Soviet's most important sources of improperly obtained Western technology. U.S. Under Secretary of Defense Fred Iklé has warned the Austrian government that unless export controls in that country are tightened, Austria may be denied access to sensitive U.S. industrial goods. Last week Ronald Reagan met Austrian Chancellor Bruno Kreisky in Washington, and a U.S. official subsequently announced that the two countries "will cooperate" on the technology issue. Says a Swiss official: "We will probably never discover where the Micraligns are. Presumably, the Soviets are having a great time taking them apart right now."

SUMMARY OF THE PERKIN-ELMER MICRALIGN CASE

In the February 14, 1983, edition of Time magazine, p. 41, there was an account of a diversion of a U.S. export subject to controls under the national security provisions of the Export Administration Act of 1979. Banking Committee staff has corroborated the report. The article appears to be accurate in all details. A copy is attached.

Involved are two projection mask aligners—Micraligns—used in the manufacture of microcircuitry for everything from digital watches to missile guidance systems. The equipment is made by the Perkin-Elmer Corporation of Norwalk, Connecticut. They were designed ten years ago, and more advanced models are now manufactured. These models in question, however, are still subject to national security controls. Perkin-Elmer Vice President James P. Gregory described the equipment as sensitive; but not state of the art, its usefulness to the Soviets evidenced by their efforts to obtain the equipment.

The Soviet bloc has made a number of attempts to obtain the micraligns from Perkin-Elmer.

In March 1982, Perkin-Elmer was approached again to sell the equipment, this time by a Massachusetts firm, that wanted to ship the equipment—as exporting agent—to a Swiss company, Favag S.A. Favag is a medium-sized electronics company located in the watch-making city of Neuchâtel.

Perkin-Elmer, unfamiliar with Favag and aware of previous Soviet attempts to obtain micraligns, notified the Customs Service, the Commerce Department, and the FBI. (This illustrates the confusion in our export enforcement operations.)

Contacts with Favag indicated that they wanted the equipment to sell it to another company, Eler Engineering of Geneva, Switzerland. Eler had no legitimate use for the equipment.

In August 1982, the Commerce Department issued a validated license for the export of the two micraligns, based upon the assurances from the Swiss Government, despite knowledge that the Soviet bloc had been trying to obtain micraligns from Perkin-Elmer, and also despite a poor Swiss track record in protecting the diversion of U.S. origin controlled exports. The license application was never submitted to the Defense Department for comment (as a rule, Commerce does not submit validated license applications to DoD for exports to free world countries; whether neutrals such as Switzerland should be treated in this manner is another whole issue).

In August 1982, Perkin-Elmer transferred the two micraligns to Eaton Kings, a company operating as the shipping agent, based in Westwood, Massachusetts. Eaton Kings was the company officially given, therefore, the validated license for export. Eaton Kings shipped the micraligns to Favag in Switzerland.

Favag immediately resold them to Eler Engineering in Geneva.

From Geneva, the equipment was sent to Paris, where it disappeared.

The case is currently under investigation by the Commerce Department's Office of Export Enforcement.

Senator GARN. The Commerce Department knew that the Soviet bloc had made a number of previous attempts to obtain the equipment in question. It was informed that the purchaser of the equipment intended to resell the equipment to a party that had no legitimate use for it.

Nevertheless, the Commerce Department granted a license for the sale of these two machines, capable of manufacturing microcircuitry for everything from digital watches to missile guidance systems, to a company in Switzerland, on the sole basis of assurances received from the Swiss Government, a neutral country with a poor track record for safeguarding U.S. technology.

Moreover, the Commerce Department failed to involve in any meaningful way in the case either the Customs Service or the FBI, agencies with far more law enforcement expertise and foreign contacts.

After approving the sale in August of last year, the Commerce Department was forced to admit in December that the equipment had been diverted to the Soviet Bloc.

We can look for that expense to show up in the fiscal 1984 and 1985 defense budgets.

Second, before I close, just 2 weeks ago, the Commerce Department led a Government delegation to the Cocom countries to discuss enforcement of our multilateral export controls.

However, before seeking this foreign cooperation, the Commerce Department failed to first work out a memorandum of understanding with our export control agencies here in the United States. I don't know what the Commerce Department officials expected to tell our allies about our own enforcement procedures or how they expected to counsel our allies on their procedures while ours remained to be worked out.

The Foreign Relations Committee has often pointed out that relations with our allies are delicate and sensitive, and no more so than in the area of export control. The cause of export control could hardly have been furthered by this new dose of confusion from this ill-timed delegation.

Mr. Chairman, I've spoken at length, but I think there are few areas of national policy as important as this area.

I want to emphasize again that I proposed a couple of years ago, and continue to propose, a separate agency not because I think we need more agencies in the Government, but because I think we have biases and interagency conflicts that simply cannot be resolved.

There is nobody who more sincerely agrees with the need too solve the problem than Secretary Olmer. I've had many conversations with him. He wants to solve the problem as badly as Senator Heinz and I, or anybody else does. No doubt about that. And he's worked very hard to improve Commerce's track record.

But again, it's been my observation over 8 years that Commerce is supposed to promote trade. That is the primary reason for that Department's existence. So no matter how sincere Mr. Olmer or future people in that position are, I don't think it's possible, I really don't think it's possible to overcome the institutional bias, anymore than if we put Mr. Perle in charge of export controls at the Defense Department. They would shut down everything with the Defense Department bias. So I have come to that reluctant conclusion that a separate office, with none of these biases, might look a great deal more objectively at these issues than either Defense or Commerce or State.

Now, I'm very pleased that Senator Heinz is so active in this. His bill is a major contribution to strengthening this process. Senator Nunn has certainly put forth some very good ideas, and I'm very confident that what I said in February—I want to repeat again: The differences between the three of us in our bills are far, far fewer than the agreement. All three of us agree that the goal of our bills is complementary, and I am confident that we will be able, as a result of these hearing under Senator Heinz' leadership, that we will be able to come out with a strong bill and an improvement in this process.

I can't think of anything more important that this Congress can do, particularly in light of the continual attacks on the Defense budget, and I would hope—it's interesting, some of the worst critics of the Defense budget on the other hand are some of those that would like to liberalize export control. You can't go both directions. You really can't.

Some of those in the Congress should take a look and realize that if they want to reduce Defense expenditures, then let's tighten up technology flow to the Soviet Union. Failure to do so requires us to spend more for Defense than we would otherwise need.

Mr. Chairman, I thank you very much for giving me this much time. I do have to go to a subcommittee chairman's meeting of appropriations and hope to get back long before the hearing is over.

If I'm not able to, I would appreciate it if you would submit my questions, of which I have many, to the witnesses for their response in writing.

Senator HEINZ. I'd be very pleased to do so. Thank you for an excellent opening statement that I agree with in practically every respect, and particularly when you say "the differences are few and our goals are quite similar."

[Complete statements of Senators Heinz and Garn and copies of the bills being considered follow:]

OPENING STATEMENT OF SENATOR HEINZ

This marks the second in the series of hearings which this Committee will be holding to consider various aspects of the Export Administration Act, which expires on September 30. Today we will consider national security controls and our relations with the other major high technology producers within Cocom, which is comprised of our NATO allies and Japan.

This is a legislative hearing and the witnesses will not only be commenting on the administration of national security controls; they will also be commenting on the legislative proposals which Senator Garn, Senator Nunn, and I have submitted for consideration.

As I have said previously, all three bills complement one another, and I am hopeful that this Committee can find a way to achieve the objections of all three bills in a single bill as it moves toward markup. Indeed, I have already incorporated a number of Senator Nunn's proposals into my bill, and Senator Garn has indicated sympathy for those suggestions as well.

With regard to national security controls, Senator Garn and I share the same concerns about the dangers of inadequate licensing practices and lax enforcement. Our solutions, however, take a separate path. Senator Garn believes that a major source of the problem lies in the licensing process and in the low priority export controls are given within the Commerce Department—hence, he proposes a structural solution.

In contrast, I believe that the primary source of the problem lies in enforcement rather than licensing and that the vast majority of our problems with regard to national security controls could be solved with a more vigorous and efficient enforcement effort. Part of this problem is due to the rapid pace of development of high technology and high technology products. Our licensing and enforcement structure has simply not kept up with it.

Another part of the problem regarding high technology transfer to the Soviet Union and its allies come from the weak and ineffectual nature of the Cocom organization. Time and again, we hear reports of our allies refusing to cooperate or dragging their feet, in response to our efforts to tighten up high technology transfers. Efforts are currently under way to negotiate new, tougher multilateral restrictions within Cocom, and we will hear a progress report on that today from Dr. Schneider.

I am not optimistic, however, that we can, in the short run, persuade our allies to cooperate in efforts to stem the technology flow to the East, at least within the current structure of Cocom. That is why I have proposed in my bill that the Administration enter into negotiations to strengthen Cocom and to raise it to treaty status. In the absence of such strengthening I fear that the allies will continue to take advantage of our unilateral controls to increase their market share and that not only our national security interests but our economic competitiveness will suffer thereby.

It is within that context that I have proposed an increased capability for foreign availability assessment. Such capability has been sadly lacking at the Commerce Department despite the fact that the 1979 Act clearly mandated it and indeed earmarked funds for that purpose. I can well understand the frustration of American companies whose officers witness Cocom-proscribed technology being sold freely within the Eastern Bloc when they are unable to get licenses for similar technology from the U.S. Government. Increased foreign availability assessment capability would be a first step toward a solution of that problem. If Cocom has prohibited the sale of certain products and technologies to Communist destinations, then we should be able to apply strong diplomatic pressures to get our allies to stop the sales. The absense of that leverage sometimes has the effect of rendering our own national security controls meaningless, punishing only our own corporations while the Soviets obtain the desired technology and our trade competitors gain still another advantage. The day is long gone when we can afford such empty symbolism.

Finally, we will also be considering the Militarily Critical Technologies List, which was mandated by the 1979 Act. To date, it has not been used in the way that the 1979 Act's authors, myself included, intended. It is far too long and cumbersome. It we continue to try to control everything, we will be unable to control the truly critical technology. In the process we will do great harm to East-West sales and technology transfer without having an appreciable effect on restricting East-West technology transfer. It should be remembered that the United States has only one percent of the Eastern European market for manufactured goods and an even smaller percentage of the high technology market. America's export future lies in the West and among the richer less developed countries. The U.S. Government need not imperil that trade in the name of controlling the flow of technology to the East.

This problem is addressed in my bill through the proposed increased use of the qualified general license for both goods and technology as a means of alleviating what the GAO described as the "meaningless paper exercise" which accompanies the 85,000 validated licenses processed each year. If we can get a better handle on the flow of technology among Western nations while cutting down on needless and counterproductive paperwork, then we will have significantly improved the export control process. This proposal is analagous to the comprehensive operations license proposed by some members of the high technology community. I hope our witnesses will particularly comment on this proposal and the way it has been drafted in S. 397.

I look forward to discussing these and other issues with the distinguished witnesses we have before us today.

OPENING STATEMENT OF SENATOR GARN

Mr. Chairman, I commend you for holding this series of subcommittee hearings on the Export Administration Act. The calendar leaves us little time to act in this vital area of national policy, so it is important that we are getting an early start.

As a preface to today's hearing, I would like to read a quote from a recent article by Air Force Major General Doyle E. Larson, Commander of the Electronic Security Command. He makes an excellent summary of some of the gains that the Soviets have obtained militarily from the use of Western goods and technology.

"In 1970 the Soviet Union was behind in almost every aspect of military technology from strategic weapons down to light vehicles. It did not have a single successful attack-fighter design, and the fire control systems for its tanks were grossly inferior. Its anti-tank missiles were primitive as were its air-to-air missiles, avionics and aircraft guns. It lacked modern lightly armored vehicles, relied on towed artillery, had no modern helicopters in combat units, and had no modern communications in its land forces. Today . . . virtually all of the above defects have either been eliminated or compensations made."

I came to the Senate in 1975, and each year as we debated the defense budget I have seen how expenditure demands increased in order to cope with these Soviet defense advances. Here is truly an area where an ounce of prevention is worth a pound of cure. Today we will learn how billions of dollars in defense costs could have been avoided by an effective export control system. It seems to me that it is simply foolish for anyone to criticize defense spending and then refuse to work toward the establishment of an effective system of export control.

Seventeen of my colleagues and I have proposed a solution to this dangerous problem. I would like to make another quote from General Larson's article. "No matter what course of action the current administration takes, the program must not be allowed to flounder on an interagency basis. Someone has to be in charge with authority to cut across departmental egos."

This is exactly what our bill would do, by establishing a high level, Office of Strategic Trade, whose head would be a member of the National Security Council. While giving the institutional high priority to this system, with authority to cut across inter-agency rivalries, our bill would simultaneously end the current situation where the fox is left in charge of the chicken coop.

On February 3, the full Committee held a hearing on the Commerce Department's fulfillment of its role under the Export Administration Act. That hearing showed conclusively that the Commerce Department's efforts are lacking now, have been that way for thirty years, and are unlikely to be sufficiently improved in any lasting way in the future. That should not be surprising to anyone. No more should we expect the Commerce Department to do an adequate job enforcing export controls than we would expect them to do an adequate job enforcing our anti-trust statutes.

The Commerce Department is our advocate for business and trade. When we mix with that the responsibility for regulating business and trade, we get a mix of conflicting authority that allows the Department to fulfill neither of its responsibilities well. We lose export sales, we lose technology, and we get bad government.

During the last hearing, both Senator Heinz and I focused on the total failure of the Department, for example, to fulfill its legal responsibilities for the assessment of the foreign availability of controlled goods and technologies. In its annual report on export administration for fiscal year 1982, the Commerce Department reported that not a single license was granted on the basis of foreign availability.

How we can expect to conduct Cocom negotiations without an adequate assessment of foreign availability is beyond the understanding of this Senator. I also wonder how many of the more than 70 thousand export license applications required by the Commerce Department last year would have been unnecessary had foreign availability been adequately assessed.

The explanation by the Commerce Department for this total failure was that the Congress failed to appropriate funds for foreign availability assessment. Let me point out, first, that the Banking Committee authorized those funds, and that, second, we are talking about relatively small sums of money, little more than one million dollars. I have never known an agency yet to fail to obtain such small sums for what it deemed a high priority, either through lobbying the Appropriations Committees, or through the transfer of funds from other operations.

Since the February hearing, two more examples have come to my attention, reinforcing my conviction that it is in our national interest to remove export administration from the Commerce Department.

The February 14 edition of Time magazine carried an article outlining how high technology equipment subject to U.S. export controls was diverted to the Soviet bloc due to licensing and enforcement failures by the Commerce Department.

Mr. Chairman, I ask that a copy of the Time article, along with a summary by Committee staff, be included in the hearing record.

The Commerce Department knew that the Soviet bloc had made a number of previous attempts to obtain the equipment in question in this case. It was informed that the purchaser of the equipment intended to resell the equipment to a party that had no legitimate use for the equipment. Nevertheless, the Commerce Department granted a license for the sale of these two machines, capable of manufacturing microcircuity for everything from digital watches to missile guidance systems, to a company in Switzerland, on the sole basis of assurances received from the Swiss Government, a neutral country with a poor track record for safeguarding U.S. technology. Moreover, the Commerce Department failed to involve in any meaningful way in the case either the Customs Service or the FBI, agencies with far more law enforcement expertise and foreign contacts. After approving the sale in August last year, the Commerce Department was forced to admit in December that the equipment had been diverted to the Soviet bloc. We can look for that expense to show up in the fiscal year 1984 and 1985 defense budget.

Second, before I close, just two weeks ago the Commerce Department led a Government delegation to the Cocom countries to discuss enforcement of our multilateral export controls. Before seeking this foreign cooperation, however, the Commerce Department failed to first work out a memorandum of understanding with our export control enforcement agencies here in the U.S. I don't know what the Commerce Department officials expected to tell our allies about our own enforcement procedures or how they expected to counsel our allies on their procedures while ours remain to be worked out. As the Foreign Relations Committee has often pointed out, relations with our allies are delicate and sensitive, and no more so than in this area of export control. The cause of export control can hardly have been furthered by a new dose of confusion from this ill-timed delegation.

Mr. Chairman, I have spoken at some length, but I can think of few areas of national policy as important as this area. Your holding of these hearings demonstrates that you share this high priority for export administration, and I again commend you for it.

II

98TH CONGRESS
1ST SESSION

S. 397

To amend the Export Administration Act of 1979.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2 (legislative day, JANUARY 25), 1983

Mr. HEINZ introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

---

A BILL

To amend the Export Administration Act of 1979.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Export Administration Act Amendments of 1983".

FOREIGN AVAILABILITY

SEC. 2. (a) Section 14 of the Export Administration Act of 1979 is amended—

(1) by inserting "AND QUARTERLY" after "ANNUAL" in the section heading; and

(2) by adding at the end thereof the following:

"(d) Foreign Availability Report.—The Secretary and the Secretary of Defense shall jointly prepare and transmit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives quarterly reports on the operation and improvement of the Government's ability to assess foreign availability, including training of personnel, use of computers, and utilization of Foreign Commercial Service Officers.".

(b) Section 4(c) of such Act is amended by adding at the end thereof the following: "The Secretary and the Secretary of Defense shall cooperate in the gathering and assessment of information relating to foreign availability, including the establishment and maintenance of a jointly operated computer system.".

(c) Section 6(g) of such Act is amended—

(1) by inserting "(1)" after "Foreign Availability.—"; and

(2) by adding at the end thereof the following:

"(2) The Secretary, in consultation with appropriate Government agencies and with appropriate technical advisory committees established pursuant to section 5(h), shall review, on a continuing basis, the availability, to countries to which exports are controlled under this section, from sources outside the United States, including countries which participate with the United States in multilateral export controls, of any goods or technology the export of which requires a validated license under this section. In any case in which the Secretary determines, in accordance with procedures and criteria which the Secretary shall by regulation establish, that any such goods or technology are available in fact to such destinations from such sources in sufficient quantity and of sufficient quality so that the requirement of a validated license for the export of such goods or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section, the Secretary may not, after the determination is made, require a validated license for the export of such goods or technology during the period of such foreign availability, unless the President determines that the absence of export controls under this section would prove detrimental to the foreign policy of the United States. In any case in which the President determines that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination together with a concise statement of its basis, and the estimated economic impact of the decision.

"(3) The Secretary shall approve any application for a validated license which is required under this section for the export of any goods or technology to a particular country and which meets all other requirements for such an application, if the Secretary determines that such goods or technology will, if the license is denied, be available in fact to such country from sources outside the United States, including countries which participate with the United States in multilateral export controls, in sufficient quantity and of sufficient quality so that denial of the license would be ineffective in achieving the purpose set forth in subsection (a) of this section, subject to the exception set forth in paragraph (2) of this subsection. In any case in which the Secretary makes a determination of foreign availability under this paragraph with respect to any goods or technology, the Secretary shall determine whether a determination of foreign availability under paragraph (2) with respect to such goods or technology is warranted.

"(4) With respect to export controls imposed under this section, in making any determination of foreign availability, the Secretary shall accept the representations of applicants unless such representations are contradicted by reliable evidence, including scientific or physical examination, expert opinion based upon adequate factual information, or intelligence information.".

(d) Section 5(f)(3) of such Act is amended to read as follows:

"(3) With respect to export controls imposed under this section, in making any determination of foreign availability, the Secretary shall accept the representations of applicants unless such representations are contradicted by reliable evidence, including scientific or physical examination, expert opinion based upon adequate factual information, or intelligence information.".

VIOLATIONS

SEC. 3. Section 11(b)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2410(b)(1)) is amended by inserting ", or possesses or attempts to possess anything with an intent to export such thing, or conspires to export," after "anything".

ENFORCEMENT OF EXPORT CONTROLS

SEC. 4. (a) Section 12 of the Export Administration Act of 1979 (50 U.S.C. App. 2411) is amended—

(1) by striking out "head" and all that follows through "thereof)" and inserting in lieu thereof "Commissioner of the United States Customs Service of the Department of the Treasury (and officers or employees of the Service specifically designated by the Commissioner)" in subsection (a); and

(2) in the first sentence of subsection (c)(3), by striking out "department or agency with enforcement responsibilities under this Act" and inserting in lieu thereof "United States Customs Service of the Department of the Treasury".

(b) The amendments made by subsection (a) shall become effective six months after the date of enactment of this Act. After the date of enactment of this Act, the Secretary of Commerce and the Commissioner of the United States Customs Service of the Department of the Treasury shall consult with each other to effect an orderly transfer of responsibility for the enforcement of the Export Administration Act of 1979 pursuant to this section.

DENIAL OF LICENSES

SEC. 5. Section 11(c) of the Export Administration Act of 1979 is amended by adding at the end thereof the following:

"(3) In addition to any other authority under this Act, the Secretary may revoke or suspend the authority to export of any person convicted of a violation of any other provision of Federal law arising out of the export of goods or technology prohibited by or under this Act.".

IMPORT CONTROLS

SEC. 6. Section 6(a) of the Export Administration Act of 1979 is amended by inserting after the first sentence the following: "Whenever the authority conferred by this section is exercised with respect to a country, the President shall prohibit all imports from that country to the United States and its territories and possessions, subject to such exemptions for specified goods and technology as the President may prescribe.".

FOREIGN POLICY CONTROL CRITERIA

SEC. 7. Section 6(b) of the Export Administration Act of 1979 is amended to read as follows:

"(b) CRITERIA.—The President may impose, expand, or extend export controls under this section only if he determines that—

"(1) such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls;

"(2) the proposed controls are compatible with the foreign policy objectives of the United States, including the effort to counter international terrorism, and with overall United States policy toward the country which is the proposed target of the controls;

"(3) other countries support the imposition or expansion of such export controls by the United States;

"(4) the proposed controls will not have an adverse extraterritorial effect on countries friendly to the United States;

"(5) the proposed controls will not have an adverse effect on the export performance of the United States, on the competitive position of the United States in the international economy, on the international reputation of the United States as a supplier of goods and technology, and on individual United States companies and their employees and communities, taking into account the effects of the controls on existing contracts; and

"(6) the United States has the ability to enforce the proposed controls effectively.

A report setting forth such determinations shall be transmitted to the Congress not later than the date on which controls are imposed.".

DENIAL OF IMPORT AUTHORITY

SEC. 8. Section 11(c) of the Export Administration Act of 1979 is amended by adding at the end thereof the following:

"(4) The Secretary may prohibit any person found to have violated this Act or any regulation, order, or license issued under this Act from importing goods or technology into the United States or its territories and possessions.".

ADVISORY COMMITTEES

SEC. 9. Section 4(f) of the Export Administration Act of 1979 is amended—

(1) by inserting "(1)" after "BUSINESS.—"; and

(2) by adding at the end thereof the following:

"(2) In carrying out the provisions of this Act, the Secretary shall consult on a continuing basis with the advisory committees established under section 135 of the Trade Act of 1974.".

LICENSING PROCEDURE

SEC. 10. Section 10 of the Export Administration Act of 1979 is amended—

(1) by striking out "90" each place it appears and inserting in lieu thereof "60";

(2) by striking out "30" each place it appears and inserting in lieu thereof "20"; and

(3) by striking out "60" and inserting in lieu thereof "40".

SECURITY MEASURES

SEC. 11. Section 5 of the Export Administration Act of 1979 is amended by adding at the end thereof the following:

"(m) SECURITY MEASURES.—The Commissioner of Customs, in consultation with the Secretary and the Director of the Federal Bureau of Investigation, shall provide advice and technical assistance to persons engaged in the manufacture or handling of goods or technology subject to controls under this section to develop security systems to prevent violations or evasion of controls imposed under this section.".

SHORT SUPPLY CONTROLS

SEC. 12. Section 7 of the Export Administration Act of 1979 is amended by striking out subsections (i) and (j).

AVAILABILITY OF INFORMATION

SEC. 13. (a) Section 12(c)(3) of the Export Administration Act of 1979 is amended—

(1) by inserting ", including information pertaining to subjects of ongoing investigations," after "enforcement of this Act" in the first sentence; and

(2) by adding at the end thereof the following: "The Secretary shall consult on a continuing basis with the Attorney General, the Commissioner of Customs, and the heads of other departments and agencies which obtain information subject to this paragraph to facilitate the sharing of such information.".

NEGOTIATIONS

SEC. 14. The President shall enter into negotiations—

(1) with the governments which are participants in the group known as the Coordinating Committee in order to reach agreement on a multilateral treaty among the participants; and

(2) with the governments of other countries in order to achieve bilateral agreements;

to provide for improved enforcement and administration of export control laws.

SANCTITY OF CONTRACTS

SEC. 15. Section 6 of the Export Administration Act of 1979 is amended by adding at the end thereof the following:

"(l) EFFECT ON EXISTING CONTRACTS.—Export controls imposed under this section shall not apply to exports pursuant to a contract or other agreement entered into prior to the imposition of such controls.".

EXPIRATION OF FOREIGN POLICY CONTROLS

SEC. 16. Section 6(a)(2) of such Act is amended—

(1) by striking out "1979, or one year" and inserting in lieu thereof "1983, or six months"; and

(2) by striking out "one year" and inserting in lieu thereof "six months".

SPECIAL LICENSING PROCEDURES

SEC. 17. Section 5(e) of the Export Administration Act of 1979 is amended—

(1) by striking out paragraph (3) and inserting in lieu thereof the following:

"(3) To the maximum extent practicable, consistent with the national security of the United States, the Secretary shall—

"(A) require a qualified general license in lieu of a validated license under this section for the export of goods or technology if the export of such goods or technology is restricted pursuant to a multilateral agreement, formal or informal, to which the United States is a party, but such export does not require the specific approval of the parties to such multilateral agreement;

"(B) develop and encourage the use of special licensing procedures under which qualified exporters receive approval to conduct a series of transactions under which goods or technology may be exported or reexported to approved consignees outside the United States without having to apply for and receive individually validated export licenses; and

"(C) exempt transactions of limited value from individually validated license requirements.

The Secretary shall periodically review the various special licensing procedures taking appropriate action to increase utilization by reducing qualification requirements or lowering minimal thresholds, to combine procedures which overlap, and to eliminate those procedures which appear to be of marginal utility."; and

(2) by striking out paragraph (4).

AUTHORIZATION

SEC. 18. Section 18(b)(1) of the Export Administration Act of 1979 is amended to read as follows:

"(1) $ for each of the fiscal years 1982 through 1989, of which $ shall be available each year for foreign availability assessment; and".

EXTENSION OF ACT

SEC. 19. Section 20 of the Export Administration Act of 1979 is amended by striking out "September 30, 1983" and inserting in lieu thereof "September 30, 1989".

II

98TH CONGRESS
1ST SESSION

S. 407

To improve the enforcement of export administration laws, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2 (legislative day, JANUARY 25), 1983

Mr. NUNN (for himself and Mr. CHILES) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

---

A BILL

To improve the enforcement of export administration laws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Export Administration Enforcement Act of 1983".

SEC. 2. Section 11(b)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2410(b)(1)) is amended by inserting ", or possesses or attempts to possess anything with an intent to export such thing," after "anything".

ENFORCEMENT OF EXPORT CONTROLS

SEC. 3. (a) Section 12 of the Export Administration Act of 1979 (50 U.S.C. App. 2411) is amended—

(1) in subsection (a)—

(A) by inserting "(1)" after "GENERAL AUTHORITY.—";

(B) by striking out "head" and all that follows through "thereof)" and inserting in lieu thereof "Commissioner of the United States Customs Service of the Department of the Treasury (and officers or employees of the Service specifically designated by the Commissioner)"; and

(C) by adding at the end of subsection (a) the following new paragraphs:

"(2) An officer of the United States Customs Service of the Department of the Treasury or other person authorized to board or search vessels who has reasonable cause to suspect that any goods or technology have been or will be exported from the United States in violation of this Act, may—

"(i) stop, search, and examine, within or without his district, a vehicle, vessel, or person, on which or whom he has reasonable cause to suspect there are any such goods or technology, whether by the person in possession or charge or by, in, or upon such vehicle or vessel, or otherwise;

"(ii) search, wherever found, any package or container in which he has reasonable cause to suspect there are any such goods or technology;

"(iii) seize and secure for trial any such goods or technology on or about such vehicle, vessel, or person, or in such package or container; and

"(3)(A) An officer of the United States Customs Service of the Department of the Treasury or other person authorized to board or search vessels may, while in the performance of, and in connection with, official duties, make arrests without warrant in the enforcement of the provisions of this Act. The arrest authority conferred by this subsection is in addition to any arrest authority under other laws.

"(B) If such officer or person has reasonable cause to suspect that any goods or technology have or would have been exported from the United States in violation of this Act, the officer or person shall refer such matter to the Secretary of the Treasury, or his designee, or the Attorney General for civil or criminal action, respectively, in accordance with this section."

(b) Section 12(c)(3) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)(3)), is amended by striking out "department or agency with enforcement responsibilities under this Act" and inserting in lieu thereof "United States Customs Service of the Department of the Treasury (and officers or employees of the Service specifically designated by the Commissioner).".

(c) Section 11(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2410(c)) is amended by striking out "head" and all that follows through "thereof" and inserting in lieu thereof "Commissioner of the United States Customs Service of the Department of the Treasury (and officers or employees of the Service specifically designated by the Commissioner).".

(d) The amendments made by subsections (a), (b), and (c) shall become effective six months after the date of enactment of this Act. After the date of enactment of this Act, the Secretary of Commerce and the Commissioner of the United States Customs Service of the Department of the Treasury shall consult with each other to effect an orderly transfer of responsibility for the enforcement of the Export Administration Act of 1979 pursuant to this section.

CONTRACTS BETWEEN UNITED STATES PERSONS AND COMMUNIST COUNTRIES

SEC. 4. Section 12(a) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(a)) (as amended by section (3) of this Act) is amended by adding at the end thereof the following new paragraph:

"(4) The United States Department of Commerce shall, in consultation with the Commissioner of the United States Customs Service and the Secretary of State, monitor the performance of contracts between the United States persons and

Communist countries, as defined in the last sentence of section 620(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(f)), to assure compliance with the requirements of this Act.".

II

98TH CONGRESS
1ST SESSION

S. 434

To unify the export administration functions of the United States Government within the Office of Strategic Trade, to improve the efficiency and strategic effectiveness of export regulation while minimizing interference with the ability to engage in commerce, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3 (legislative day, JANUARY 25), 1983

Mr. GARN (for himself, Mr. PROXMIRE, Mr. NUNN, Mr. COHEN, Mr. TOWER, Mr. MOYNIHAN, Mr. LAXALT, Mr. THURMOND, Mr. ARMSTRONG, Mr. TRIBLE, Mr. MATTINGLY, Mr. HATCH, Mr. HELMS, Mr. PRESSLER, Mr. ABDNOR, Mr. SYMMS, Mr. EAST, and Mr. WALLOP) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

---

A BILL

To unify the export administration functions of the United States Government within the Office of Strategic Trade, to improve the efficiency and strategic effectiveness of export regulation while minimizing interference with the ability to engage in commerce, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Office of Strategic Trade Act of 1983".

TABLE OF CONTENTS

Sec. 1. Short title.
Sec. 2. Findings.
Sec. 3. Declaration of policy.
Sec. 4. Definitions.
Sec. 5. Establishment of Office of Strategic Trade.
Sec. 6. General provisions.
Sec. 7. National security controls.
Sec. 8. Foreign policy controls.
Sec. 9. Short supply controls.
Sec. 10. Foreign boycotts.
Sec. 11. Procedures for hardship relief from export controls.
Sec. 12. Procedures for processing export license applications.
Sec. 13. Violations.
Sec. 14. Enforcement.
Sec. 15. Exemption from certain provisions relating to administrative procedure and judicial review.
Sec. 16. Annual report.
Sec. 17. Regulatory authority.
Sec. 18. Transfer of functions.
Sec. 19. Effect on other Acts.
Sec. 20. Authorization of appropriations.
Sec. 21. Effective date.
Sec. 22. Termination date.
Sec. 23. Savings provisions.
Sec. 24. Technical amendments.
Sec. 25. Amendments to the National Security Act of 1947.

FINDINGS

SEC. 2. The Congress makes the following findings:

(1) The ability of United States citizens to engage in international commerce is a fundamental concern of United States policy.

(2) It is important for the national interest of the United States that both the private sector and the Federal Government place a high priority on exports, which would strengthen the Nation's economy.

(3) Uncertainty of export control policy can inhibit the efforts of American business and work to the detri-

ment of the overall attempt to improve the trade balance of the United States.

(4) The failure to restrict the transfer of national security sensitive technology and goods to the Soviet Union and other countries where actions or policies are adverse to the national security interests of the United States, has led to the significant enhancement of Soviet bloc military-industrial capabilities, thereby creating a greater threat to the security of the United States, its allies, and other friendly nations, and increasing the defense budget of the United States.

(5) The failure to restrict the export of national security sensitive technology and goods is attributable in large part to the diffusion of decisionmaking responsibilities regarding strategic trade matters among several Federal agencies, and the lack of adequately trained and disciplined personnel.

(6) Because of the overlapping and frequently confusing responsibilities of the many Federal agencies that administer controls over strategic trade, the United States export control system has not served national security, foreign policy, or export interests effectively.

(7) It is important that the administration of export controls imposed for national security purposes

give special emphasis to the need to control exports of goods and technology (and goods which contribute significantly to the transfer of such technology) that could make a significant contribution to the military potential of any country or combination of countries which would be detrimental to the national security of the United States.

(8) Further, the availability of certain materials at home and abroad varies so that the quantity and composition of United States exports and their distribution among importing countries may affect the welfare of the domestic economy and may have an important bearing upon fulfillment of the foreign policy of the United States.

(9) Minimization of restrictions for reasons of national security and/or foreign policy on exports of agricultural commodities and products is of critical importance to the maintenance of a positive balance of payments, to reducing the level of Federal expenditures for agricultural support programs, and to United States cooperation in efforts to eliminate malnutrition and world hunger.

DECLARATION OF POLICY

SEC. 3. The Congress makes the following declarations:

(1) It is the policy of the United States to minimize uncertainties in export control policy and to encourage trade with all countries with which the United States has diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest.

(2) It is the policy of the United States to use export controls only after full consideration of the impact on the economy of the United States—

(A) to restrict the export or re-export of goods and technology which could make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States;

(B) to restrict the export of goods and technology where necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations; and

(C) to restrict the export of goods where necessary to protect the domestic economy from the excessive drain of scarce materials.

(3) It is the policy of the United States (A) to apply any necessary controls to the maximum extent possible in cooperation with all nations, and (B) to en-

courage observance of a uniform export control policy by all nations with which the United States has defense treaty commitments or common strategic objectives.

(4) It is the policy of the United States to use its economic resources and trade potential to further the sound growth and stability of its economy as well as to further its national security and foreign policy objectives.

(5) It is the policy of the United States—

(A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any United States person;

(B) to encourage and, in specified cases, require United States persons engaged in the export of goods or technology or other information to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against a country friendly to the United States or against any United States person; and

(C) to foster international cooperation and the development of international rules and institutions to assure reasonable access to world supplies.

(6) It is the policy of the United States that the desirability of subjecting, or continuing to subject, particular goods or technology or other information to United States export controls should be subjected to review by and consultation with representatives of appropriate United States Government agencies.

(7) It is the policy of the United States to use export controls, including license fees, to secure the removal by foreign countries of restrictions on access to supplies where such restrictions have or may have a serious domestic inflationary impact, have caused or may cause a serious domestic shortage, or have been imposed for purposes of influencing the foreign policy of the United States. In effecting this policy, the President shall make reasonable prompt efforts to secure the removal or reduction of such restrictions, policies, or actions through international cooperation and agreement before imposing controls on exports from the United States. No action taken in fulfillment of the policy set forth in this paragraph shall apply to the export of medicine or medical supplies.

(8) It is the policy of the United States to use export controls to encourage other countries to take immediate steps to prevent the use of their territories or resources to aid, encourage, or give sanctuary to those persons involved in directing, supporting, or participating in acts of international terrorism. To achieve this objective, the President shall make reasonable and prompt efforts to secure the removal or reduction of such assistance to international terrorists through international cooperation and agreement before imposing export controls.

(9) It is the policy of the United States to cooperate with other countries with which the United States has defense treaty commitments or common strategic objectives in restricting the export of goods and technology which could make a significant contribution to the military potential of any country or combination of countries which would prove detrimental to the security of the United States and of those countries with which the United States has defense treaty commitments or common strategic objectives.

(10) It is the policy of the United States to minimize restrictions on the export of agricultural commodities and products.

(11) It is the policy of the United States to encourage other friendly countries to cooperate in restricting the sale of goods and technology that can harm the security of the United States.

DEFINITIONS

SEC. 4. As used in this Act—

(1) the term "person" includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof;

(2) the term "United States person" means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern) and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President;

(3) the term "good" means any article, natural or manmade substance, material, supply or manufactured product, including inspection and test equipment, but excluding technical data;

(4) the term "technology" means technological or technical data, and shall include information or know-how of any kind that can be used or adapted for use in the design, production, manufacture, repair, overhaul, processing, engineering, development, operation, maintenance, or restoration of goods or commodities, including computer software. Information or know-how may take tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, or manuals, or take an intangible form, such as training or technical services. Technological data shall also include all goods or commodities that will be used in the industrial application of the technological information, regardless of the end-use classification of the goods or commodilties;

(5) the term "export of goods" means—

(A) an actual shipment or transmission of goods out of the United States, or

(B) an actual shipment or transmission of goods, or portions thereof, originally exported from the United States to any destination other than the indicated to the appropriate United States authority as the initial destination of the goods at the time of original export from the United States.

(6) The term "export of technology" means—

(A) an actual shipment or transmission of technology out of the United States; or

(B) any release of technology of United States origin in a foreign country;

(7) the term "Director" means the Director of the Office of Strategic Trade;

(8) the term "Office" means the Office of Strategic Trade; and

(9) the term "United States" means the States of the United States, its commonwealths, territories (leased or owned), its dependencies, and the District of Columbia.

ESTABLISHMENT OF OFFICERS, FUNCTIONS, AND STRUCTURE OF OFFICE OF STRATEGIC TRADE

SEC. 5. (a) ESTABLISHMENT AND PRINCIPAL OFFICERS.—(1) There is established as an independent executive agency an Office of Strategic Trade. The Office shall be headed by a Director of Strategic Trade, who shall be appointed by the President by and with the advice and consent of the Senate, and who shall serve for a term of four years, and who shall be assisted in the fulfilling of his responsibilities by a Deputy Director of Strategic Trade. The Office of Strategic Trade shall be administered, in accordance with the provisions of this Act, under the supervision and direction of the Director. The Director shall exercise all of the executive and administrative functions and authorities conferred in or transferred to the Office of Strategic Trade by this Act. The Director or his designee shall act as Chairman of the Interagency Advisory Committee for Export Policy (ACEP), which shall consist of representatives from the Department of Commerce, the Department of State, the Department of Defense, the Department of Energy, the Department of the Treasury, the Central Intelligence Agency, and the National Aeronautics and Space Administration.

(2) There shall be in the Office of the Director of the Office of Strategic Trade an Exporter Services Facility which shall act as liaison with the business community and shall receive and respond to inquiries from the public or interested persons.

(b) OTHER PRINCIPAL OFFICERS.—(1) There shall be in the Office an Operations Division which shall be headed by an Assistant Director for Operations. It shall be the function of the Assistant Director for Operations to process incoming applications for export licenses, to disseminate such applications to the licensing division for evaluation, and to forward approved licenses to the applicant. In addition, the Operations Division shall monitor conformity of export applications and licenses with the terms and conditions applicable to them. The Operations Division shall perform such other functions as the Director may determine to be appropriate which were carried out prior to the effective date of this Act by the Office of Export Administration's Operating Division.

(2) There shall be in the Office a Compliance Division which shall be headed by an Assistant Director for Compliance and which shall carry out functions performed prior to the effective date of this Act by the Deputy Assistant Secretary of Commerce for Export Enforcement. The Compliance Division may also conduct physical inspections for controlled items, and shall monitor overseas compliance with the Export Administration Act of 1979.

(3) There shall be in the Office a CoCom Division which shall be headed by an Assistant Director for CoCom Affairs and which shall carry out functions relating to the representation of technical positions (including those of military and strategic significance) in connection with the Coordinating Committee for Multilateral Export Controls (CoCom). The CoCom Division shall also provide representatives to the Department of State to assist in negotiations with other members of the Coordinating Committee.

(4) There shall be in the Office a Licensing Division which shall be headed by an Assistant Director for Licensing and which shall be responsible to the Director for the evaluation of criteria and establishment of policy relating to the commodity control list, munitions control list, foreign policy controls, and short supply controls. The Licensing Division

shall prepare draft documents and license criteria for license applications and submit such documents to the Advisory Committee for Export Policy for review. In addition, there shall be within the Licensing Division—

(A) an Office of the Operating Committee, which shall disseminate license documents from the licensing officers to the interagency committee members, specify deadlines, collect responses and recommendations from the respective agencies, summarize each agency position for the Office of the Director, and prepare cases for review by the Export Administration Review Board;

(B) an Office of Computer Licensing, which shall prepare draft documents analyzing criteria for licensing with respect to computers in accordance with the commodity control list;

(C) an Office of Capital Goods Licensing which shall prepare draft documents analyzing criteria for licensing with respect to capital goods in accordance with the commodity control list;

(D) an Office of Electronics, which shall prepare draft documents analyzing criteria for licensing with respect to the field of electronics in accordance with the commodity control list;

(E) an Office of Short Supply Licensing which shall prepare draft documents analyzing criteria for licensing with respect to the field of short supplies;

(F) an Office of Munitions Control which shall carry out the functions formerly carried out by the Department of State's Office of Munitions Control in maintaining the munitions control list;

(G) an Office of Technological Data which shall monitor and review the transfer of unembodied technology and knowledge through cultural exchange, educational, or other programs or means;

(H) an Office of Evaluation which shall monitor and review exports under general and validated licenses to determine whether items should be added to or deleted from commodity control lists, to assess foreign availability and comparability, and to make periodic (not less often than quarterly) specific recommendations, regarding additions to or deletions from the commodity control list to the Assistant Director for Licensing; and

(I) an Office of Foreign Policy Controls which shall formulate and maintain the list of foreign policy controls, in consultation with the Export Administration Review Board.

(5) There shall be in the Office a General Counsel.

GENERAL PROVISIONS

SEC. 6. (a) TYPES OF LICENSES.—Under such conditions as may be imposed by the Director which are consistent with the provisions of this Act, the Director may require any of the following types of export licenses:

(1) A validated license, authorizing a specific export, issued pursuant to an application by the exporter.

(2) A qualified general license, authorizing multiple exports, issued pursuant to an application by the exporter.

(3) A general license, authorizing exports without application by the exporter.

(4) Such other licenses as may assist in the effective and efficient implementation of this Act.

(b) COMMODITY CONTROL LIST.—The Director shall establish and maintain a list (hereinafter in this Act referred to as the "commodity control list") consisting of any goods or technology subject to export controls under this Act.

(c) FOREIGN AVAILABILITY.—In accordance with the provisions of this Act, the President shall not impose export controls for foreign policy or national security purposes on the export from the United States of goods or technology where he determines adequate evidence has been presented to him that the goods or technology are available without restriction from sources outside the United States in comparable quantities and comparable in quality to those produced in the United States, and that adquate evidence has been presented to him demonstrating that the absence of such controls would not prove detrimental to the foreign policy or national security of the United States.

(d) RIGHT OF EXPORT.—No authority or permission to export may be required under this Act, or under regulations issued under this act, except to carry out the policies set forth in section 3 of this Act.

(e) DELEGATION OF AUTHORITY.—The President may delegate the power, authority, and discretion conferred upon him by this Act to such departments, agencies, or officials of the Government as he may consider appropriate, except that no authority under this Act may be delegated to, or exercised by, any official of any department or agency the head of which is not appointed by the President, by and with the advice and consent of the Senate. The President may not delegate or transfer his power, authority, and discretion to overrule or modify any recommendation or decision made by the Director, the Secretary of Defense, or the Secretary of State pursuant to the provisions of this Act.

(f) NOTIFICATION OF THE PUBLIC; CONSULTATION WITH BUSINESS.—The Director shall keep the public fully apprised of changes in export control policy and procedures instituted in conformity with this Act with a view to encouraging trade. The Director shall establish suitable procedures for obtaining the views of a broad spectrum of enterprises, labor organizations, and citizens interested in or impacted by export controls on the United States export control policy and the foreign availability of goods and technology.

NATIONAL SECURITY CONTROLS

SEC. 7. (a) AUTHORITY.—(1) In order to carry out the policy set forth in section 3(2)(A) of this Act, the President may, in accordance with the provisions of this section, prohibit or curtail the export of any goods or technology subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. The authorities and duties contained in this subsection shall be exercised by the Director, in consultation with the Secretary of Defense, and such other departments and agencies as the Director considers appropriate, and shall be implemented by means of export licenses described in section 6(a) of this Act. In accordance with the provisions of section 12 of this Act, the Secretary of Defense shall have the right to review any export application under this section which the Secretary of Defense requests to review.

(2)(A) Whenever the Director makes any revision with respect to any goods or technology, or with respect to the countries or destinations, affected by export controls imposed under this section, the Director shall publish in the Federal Register a notice of such revision and shall specify in such notice that the revision relates to controls imposed under the authority contained in this section.

(B) Whenever the Director denies any export license under this section, the Director shall specify in the notice to the applicant of the denial of such license that the license was denied under the authority contained in this section. The Director shall also include in such notice what, if any, modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with controls imposed under this section, or the Director shall indicate in such notice which officers and employees of the Office who are familiar with the application will be made reasonably available to the applicant for consultation with regard to such modifications or restriction, if appropriate.

(3) In issuing regulations to carry out this section, the Director shall give particular attention to the devising of effective safeguards to prevent a country that poses a threat to the security of the United States from diverting covered goods and technologies to military use and to the need to take effective measures to prevent the reexport of covered goods and technologies from other countries to countries that pose a threat to the security of the United States.

(b) POLICY TOWARD INDIVIDUAL COUNTRIES.—In administering export controls for national security purposes under this section, United States policy toward individual countries shall not be determined exclusively on the basis of a country's Communist or non-Communist status but shall take into account such factors as whether its policies are adverse to the national security interests of the United States, the country's present and potential relationship to the United States, its present and potential relationship to countries friendly or hostile to the United States, its ability and willingness to control retransfers of United States exports in accordance with United States policy, and such other factors as the President considers appropriate. The President shall review not less frequently than every three years in the case of controls maintained cooperatively with other nations, and annually in the case of all other controls, United States policy toward individual countries to determine whether such policy is appropriate in light of the factors specified in the preceding sentence.

(c) NATIONAL SECURITY CONTROL LIST.—(1) The Director shall establish and maintain, as part of the commodity control list, a list of all goods and technology subject to export controls under this section. Such goods and technology shall be clearly identified as being subject to controls under this section.

(2) The Secretary of Defense and other appropriate departments and agencies shall identify goods and technology for inclusion on the national security control portion of the commodity control list. Those items on which the Director and the Secretary of Defense concur shall be subject to export controls under this section shall comprise such list. If the Director and the Secretary of Defense are unable to concur on such items, the matter shall be referred by the Director to the President for resolution.

(3) The Director shall issue regulations providing for review of the list established pursuant to this subsection not less frequently than every three years in the case of controls maintained cooperatively with other countries, and annually in the case of all other controls, in order to carry out the policy set forth in section 3(2)(A) and the provisions of this section, and for the prompt issuance of such revisions of the list as may be necessary. Such regulations shall provide interested Government agencies and other affected or potentially affected parties with an opportunity, during such review, to submit written data, views, or arguments, with or without oral presentation. Such regulations shall further provide that, as part of such review, an assessment be made of the availability from sources outside the United States of goods and technology comparable to those controlled under this section. The Director and any agency rendering advice

with respect to export controls shall keep adequate records of all decisions made with respect to revision of the list of controlled goods and technology, including the factual and analytical basis for the decision, and, in the case of the Director, any dissenting recommendations received from any agency.

(d) MILITARILY CRITICAL TECHNOLOGIES.—(1) The Secretary of Defense, in consultation with the Director, shall review and revise the national security control list established pursuant to subsection (c), as prescribed in paragraph (3) of such subsection, for the purpose of insuring that export controls imposed under this section cover and (to the maximum extent consistent with the purposes of this Act) are limited to militarily critical goods and technologies and the mechanisms through which such goods and technologies may be effectively transferred.

(2) The Secretary of Defense shall bear primary responsibility for inclusion in the national security control list of the militarily critical technologies as described below. In developing such items for inclusion, primary emphasis shall be given to—

(A) arrays of design and manufacturing know-how,

(B) keystone manufacturing, inspection, and test equipment,

(C) goods accompanied by sophisticated operation, application, or maintenance know-how, and

(D) goods (i) which would extend, complete, maintain, or modernize a process line employed in the application of a militarily critical technology, or (ii) the analysis of which would reveal or give insight into a United States military system and would thereby facilitate either the design and manufacture of that system or the development of countermeasures against that system,

which, as determined by the Secretary of Defense, are not possessed and able to be utilized by countries to which exports are controlled under this section and which, if exported, would permit a significant advance in a military system of any such country.

(3) The description of the military critical technologies referred to in paragraph (2) shall be sufficently specific to guide the determinations of any official exercising export licensing responsibilities under this Act.

(e) NATIONAL SECURITY CONTROL AGENCY.—To assist in carrying out the policy and other authorities and responsibilities of the Secretary of Defense under this section, there shall be established within the office of the Under Secretary of Defense for Policy a National Security Control Agency. The Secretary of Defense may delegate such of those authorities and responsibilities, together with such ancillary functions, as he may deem appropriate to the Agency.

(f) ANNUAL REPORT.—The Secretary of Defense shall report annually to the Congress on actions taken to carry out this section.

(g) EXPORT LICENSES.—(1) The Congress finds that the effectiveness and efficiency of the process of making export licensing determinations under this section is severely hampered by the large volume of validated export license applications required to be submitted under this Act. Accordingly, it is the intent of Congress in this subsection to encourage the use of a qualified general license in lieu of a validated license.

(2) To the maximum extent practicable, consistent with the national security of the United States, the Director may require a qualified general license in lieu of a validated license under this section for the export of goods or technology, except where—

(A) the export of such goods or technology is restricted pursuant to a multilateral agreement, formal or informal, to which the United States is a party and, under the terms of such multilateral agreement, such export requires the specific approval of the parties to such multilateral agreement; or

(B) the United States is seeking the agreement of other suppliers to apply comparable controls to such goods or technology and, in the judgment of the Director, United States export controls on such goods or technology, by means of such validated license, are necessary prior to the conclusion of such agreement.

(3) To the maximum extent practicable, consistent with the national security of the United States, the Director may require a qualified general license, in lieu of a validated license, under this section for the export of goods or technology if the export of such goods or technology is restricted pursuant to a multilateral agreement, formal or informal, to which the United States is a party, but such export does not require the specific approval of the parties to such multilateral agreement.

(h) FOREIGN AVAILABILITY.—(1) The Director, in consultation with the Secretary of Defense and such other Government agencies as may be appropriate in the circumstances as well as with such technical advisory committees established pursuant to subsection (i) as the Director may deem appropriate, shall review, on a continuing basis, the availability, to countries to which exports are controlled under this section, from sources outside the United States, including countries which participate with the United States in multilateral export controls, of any goods or technology the export of which requires a validated license under this section. In any case in which the Director determines, in accordance with procedures and criteria which the Director shall by regulation establish, that any such goods or technologies are available in fact to such destinations from such sources in comparable quantity and of comparable quality so that the requirement of a validated license for the export of such goods or technology would have no effect in achieving the purpose set forth in subsection (a) of this section, the Director may not, after the determination is made, require a validated license for the export of such goods or technology during the period of such foreign availability, unless the President determines that the absence of export controls under this section would prove detrimental to the national security of the United States. In any case in which the President determines that export controls under this section must be maintained notwithstanding foreign availability, the Director shall publish that determination together with a concise statement of its basis, and the estimated economic impact of the decision.

(2) Subject to paragraph (4), the Director shall approve any applicaton for a validated license which is required under this section for the export of any goods or technology to a particular country and which meets all other requirements for such an application, if the Director determines that such goods or technology will, if the license is denied, be available

in fact to such country from sources outside the United States, including countries which participate with the United States in multilateral export controls, in comparable quantity and of comparable quality so that denial of the license would be ineffective in achieving the purpose set forth in subsection (a) of this section, subject to the exception set forth in paragraph (1) of this subsection. In any case in which the Director makes a determination of foreign availability under this paragraph with respect to any goods or technology, the Director shall determine whether a determination of foreign availability under paragraph (1) with respect to such goods or technology is warranted.

(3) With respect to export controls imposed under this section, any determination of foreign availability which is the basis of a decision to grant a license for, or to remove a control on, the export of a good or technology, shall be made in writing and shall be supported by reliable evidence, including scientific or physical examination, expert opinion based upon adequate factual information, or intelligence information. In assessing foreign availability with respect to license applications, uncorroborated representations by applicants shall not be deemed sufficient evidence of foreign availability.

(4) A technology or good proposed for, or subject to, export control for national security purposes, which is not possessed in comparable quantity or quality by a nation or

combination of nations threatening to the national security of the United States, shall not be deemed to be available to that nation or combination of nations from foreign sources until the Secretary of State verifies that negotiations with the appropriate foreign governments have been undertaken. For purposes of this Act, assessment of comparable quantity or quality shall include but not be limited to the following factors: cost, reliability, the availability and reliability of spare parts and the cost and quality thereof, maintenance programs, technological data packages, backup packages, long-term durability, scale of production, ease with which machinery will be integrated in the mode of production, and spoilages and tolerance factors for end products produced by the machinery. In any case in which, in accordance with this subsection, export controls are imposed under this section notwithstanding foreign availability, the President shall take steps to initiate negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such availability. Whenever the President has reason to believe goods or technology subject to export control for national security purposes by the United States may become available from other countries to countries to which exports are controlled under this section and that such availability can be prevented or eliminated by means of negotiations with such other countries, the President shall promptly initiate negotiations with the governments of such other countries to prevent such foreign availability.

(5) In order to further carry out the policies set forth in this Act, the Director shall establish within the Office a capability to monitor and gather information with respect to the foreign availability of any goods or technology subject to export controls under this Act.

(6) Each department or agency of the United States with responsibilities with respect to export controls, including intelligence agencies, shall, consistent with the protection of intelligence sources and methods, furnish information to the Office concerning foreign availability of goods and technology subject to export controls under this Act, and the Office, upon request or where appropriate, shall furnish to such departments and agencies the information it gathers and receives concerning foreign availability.

(i) TECHNICAL ADVISORY COMMITTEES.—(1) Upon written request by representatives of a substantial segment of any industry which produces any goods or technology subject to export controls under this section or being considered for such controls because of their significance to the national security of the United States, the Director shall appoint a technical advisory committee for any such goods or technology which the Director determines are difficult to evaluate because of questions concerning technical matters, worldwide availability, and actual utilization of production and technology, or licensing procedures. Each such committee shall consist of representatives of United States industry and Government, including the Departments of Defense, State, Commerce, the intelligence community, and, in the discretion of the Director, other Government departments and agencies. No person serving on any such committee who is a representative of industry shall serve on such committee for more than four consecutive years.

(2) Technical advisory committees established under paragraph (1) shall advise and assist the Director, the Secretary of Defense, and any other department, agency, or official of the Government of the United States to which the President delegates authority under this Act, with respect to actions designed to carry out the policy set forth in section 3(2)(A) of this Act. Nothing in this subsection shall prevent the Director or the Secretary of Defense from consulting, at any time, with any person representing industry or the general public, regardless of whether such person is a member of a technical advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Director, to present relevant material to such committees.

(3) Upon request of any member of any such committee, the Director may, if the Director determines it appropriate,

reimburse such member for travel, subsistence, and other necessary expenses incurred by such member in connection with the duties of such member.

(4) Each such committee shall elect a chairman, and shall meet at least every three months at the call of the chairman, unless the chairman determines, in consultation with the other members of the committee, that such a meeting is not necessary to achieve the purposes of this subsection. Each such committee shall be terminated after a period of two years, unless extended by the Director for additional periods of two years. The Director shall consult each such committee with respect to such termination or extension of that committee.

(5) To facilitate the work of the technical advisory committees, the Director, in conjunction with other departments and agenceis participating in the administration of this Act, shall disclose to each such committee adequate information, consistent with national security, pertaining to the reasons for the export controls which are in effect or contemplated for the goods or technology with respect to which that committee furnishes advice.

(6) Subject to subsection (h)(4) of this section, whenever a technical advisory committee certifies to the Director that goods or technology with respect to which such committee was appointed have become available in fact, to countries to

which exports are controlled under this section, from sources outside the United States, including countries which participate with the United States in multilateral export controls, in comparable quantity and of comparable quality so that requiring a validated license for the export of such goods or technology would be ineffective in achieving the purpose set forth in subsection (a) of this section, and provides adequate documentation for such certification, in accordance with the procedures established pursuant to subsection (h)(1) of this section, the Director shall investigate such availability, and if such availability is verified, the Director shall remove the requirement of a validated license for the export of the goods or technology, unless the President determines that the absence of export controls under this section would prove detrimental to the national security of the United States. In any case in which the President determines that export controls under this section must be maintained notwithstanding foreign availability, the Director shall publish that determination together with a concise statement of its basis and the estimated economic impact of the decision.

(j) MULTILATERAL EXPORT CONTROLS.—The President shall enter into negotiations with the governments participating in the group known as the Coordinating Committee (hereinafter in this subsection referred to as the "Committee") with a view toward accomplishing the following objectives:

(1) Agreement to publish the list of items controlled for export by agreement of the Committee.

(2) Agreement to hold periodic meetings with high-level representatives of such governments, for the purpose of discussing export control policy issues and issuing policy guidance to the Committee.

(3) Agreement on more effective procedures for enforcing the export controls referred to in paragraph (1).

(k) COMMERCIAL AGREEMENTS WITH CERTAIN COUNTRIES.—(1) Any United States firm, enterprise, or other nongovernmental entity which enters into any agreement with any agency of the government of a country to which exports are restricted for national security purposes, which calls for the encouragement of technical cooperation and is intended to result in the export from the United States to the other party of unpublished technical data of United States origin, shall report the agreement with such agency with sufficient detail to the Director.

(2) The provisions of paragraph (1) shall not apply to colleges, universities, or other educational institutions, except where the unpublished technical data involve a technology

identified by the Secretary of Defense as a militarily critical technology.

(l) NEGOTIATIONS WITH OTHER COUNTRIES.—The Secretary of State, in consultation with the Secretary of Defense, the Director, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with other countries regarding their cooperation in restricting the export of goods and technology in order to carry out the policy set forth in section 3(9) of this Act, as authorized by subsection (a) of this section, including negotiations with respect to which goods and technology should be subject to multilaterally agreed export restrictions and what conditions should apply for exceptions from those restrictions.

(m) DIVERSION TO MILITARY USE OF CONTROLLED GOODS OR TECHNOLOGY.—(1) Whenever there is reliable evidence that goods or technology which were exported subject to national security controls under this section to a country to which exports are controlled for national security purposes have been diverted to an unauthorized use or consignee in violation of the conditions of an export license, the Director for as long as that diversion continues—

(A) shall deny all further exports to or by the party or parties responsible for that diversion of any goods or technology subject to national security controls under this section to an unauthorized use or consignee regardless of whether such goods or technology are available to that country from sources outside the United States; and

(B) may take such additional steps under this Act with respect to the party or parties referred to in subparagraph (A) as he determines are appropriate in the circumstances to deter the further unauthorized use of the previously exported goods or technology.

(2) As used in this subsection, the term "diversion to an unauthorized use or consignee" means the use of United States goods or technology to design or produce or maintain or contribute to the design, production, or maintenance of any item on the United States Munitions List, or the transfer of United States goods or technology to any consignee or end user engaged in or contributing to such design, production, or maintenance.

(n) RECORDKEEPING.—The Director, the Secretary of Defense, and any other department or agency consulted in connection with a license application or revision of a list of controlled commodities, goods, or technologies, shall make and keep records of their respective advice, recommendations, or decisions, including the factual and analytical basis of the advice, recommendations, or decisions.

FOREIGN POLICY CONTROLS

SEC. 8. (a) AUTHORITY.—(1) In order to carry out the policy set forth in paragraph (2)(B), (7), or (8) of section 3 of this Act, the President may prohibit or curtail the exportation of any goods, technology, or other information subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States, to the extent necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations. The authority granted by this subsection shall be exercised by the Director, in consultation with the Secretary of State and such other departments and agencies as the Director considers appropriate, and shall be implemented by means of export licenses issued by the Director.

(2) Export controls maintained for foreign policy purposes shall expire one year after imposition unless extended by the President in accordance with subsections (b) and (e). Any such extension and any subsequent extension shall not be for a period of more than one year.

(3) Whenever the Director denies any export license under this subsection, the Director shall specify in the notice to the applicant of the denial of such license that the license was denied under the authority contained in this subsection, and the reasons for such denial, with reference to the criteria set forth in subsection (b) of this section. The Director shall

also include in such notice what, if any, modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with controls implemented under this section, or the Director shall indicate in such notice which officers and employees of the Office who are familiar with the application will be made reasonably available to the applicant for consultation with regard to such modifications or restrictions, if appropriate.

(4) In accordance with the provisions of section 12 of this Act, the Secretary of State shall have the right to review any export license application under this section which the Secretary of State requests to review.

(b) CRITERIA.—When imposing, expanding, or extending export controls under this section, the President shall consider—

(1) the probability that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods of technology proposed for such controls;

(2) the compatibility of the proposed controls with the foreign policy objectives of the United States, including the effort to counter international terrorism, and with overall United States policy toward the country which is the proposed target of the controls;

(3) the reaction of other countries to the imposition or expansion of such export controls by the United States;

(4) the likely effects of the proposed controls on the export performance of the United States, on the competitive position of the United States in the international economy, on the international reputation of the United States as a supplier of goods and technology, and on individual United States companies and their employees and communities, including the effects of the controls on existing contracts;

(5) the ability of the United States to enforce the proposed controls effectively; and

(6) the foreign policy consequences of not imposing controls.

(c) CONSULTATION WITH INDUSTRY.—The Director, before imposing export controls under this section, shall consult with such affected United States industries as the Director considers appropriate, with respect to the criteria set forth in paragraphs (1) and (4) of subsection (b) and such other matters as the Director considers appropriate.

(d) ALTERNATIVE MEANS.—Before resorting to the imposition of export controls under this section, the President shall determine that reasonable efforts have been made to achieve the purposes of the controls through negotiations or other alternative means.

(e) NOTIFICATION TO CONGRESS.—The President in every possible instance shall consult with the Congress before imposing any export control under this section. Except as provided in section 9(g)(3) of this Act, whenever the President imposes, expands, or extends export controls under this section, the President shall immediately notify the Congress of such action and shall submit with such notification a report specifying—

(1) the conclusions of the President with respect to each of the criteria set forth in subsection (b); and

(2) the nature and results of any alternative means attempted under subsection (d), or the reasons for imposing, extending, or expanding the control without attempting any such alternative means.

Such report shall also indicate how such controls will further significantly the foreign policy of the United States or will further its declared international obligations. To the extent necessary to further the effectiveness of such export control, portions of such report may be submitted on a classified basis, and shall be subject to the provisions of section 14(c) of this Act.

(f) EXCLUSION FOR MEDICINE AND MEDICAL SUPPLIES AND FOR CERTAIN FOOD EXPORTS.—This section does not authorize export controls on medicine, or medical supplies. Before export controls on food are imposed, expanded, or extended under this section, the Director shall notify the Secretary of State in the case of export controls applicable with respect to any developed country and shall notify the Director of the United States International Development Cooperation Agency (IDCA) in the case of export controls applicable with respect to any developing country. The Secretary of State with respect to developed countries, and the Director of the IDCA with respect to developing countries, shall determine whether the proposed export controls on food would cause measurable malnutrition and shall inform the Director of that determination. If the Director is informed that the proposed export controls on food would cause measurable malnutrition, then those controls may not be imposed, expanded, or extended, as the case may be, unless the President determines that those controls are necessary to protect the national security interests of the United States, or unless the President determines that arrangements are insufficient to ensure that the food will reach those most in need. Each such determination by the Secretary of State or the Director of the United States International Development Cooperation Agency, and any such determination by the President, shall be reported to the Congress, together with a statement of the reasons for that determination. It is the intent of Congress that the President not impose export controls under this section on any goods or technology if he determines that the principal effect of the export of such goods or technology would be to help meet basic human needs. This subsection shall not be construed to prohibit the President from imposing restrictions on the export of medicine or medical supplies or of food under the International Emergency Economic Powers Act. This subsection does not apply to any export control on medicine or medical supplies which is in effect on the effective date of the Export Administration Act of 1979 or to any export control on food which is in effect on the date of the enactment of the Export Administration Amendments Act of 1981.

(g) FOREIGN AVAILABILITY.—In applying export controls under this section, the President shall take all feasible steps to initiate and conclude negotiations with appropriate foreign governments for the purpose of securing the cooperation of such foreign governments in controlling the export to countries and consignees to which the United States export controls apply of any goods or technology comparable to goods or technology controlled under this section.

(h) INTERNATIONAL OBLIGATIONS.—The provisions of subsections (b), (c), (d), (f), and (g) shall not apply in any case in which the President exercises the authority contained in this section to impose export controls, or to approve or deny export license applications, in order to fulfill obligations of the United States pursuant to treaties to which the United States is a party or pursuant to other international agreements.

(i) COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.—The Director and the Secretary of State shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate before any license is approved for the export of goods or technology valued at more than $7,000,000 to any country concerning which the Secretary of State has made the following determinations:

(1) Such country has repeatedly provided support for acts of international terrorism.

(2) Such exports would make a significant contribution to the military potential of such country, including its military logistics capability, or would enhance the ability of such country to support acts of international terrorism.

(j) CRIME CONTROL INSTRUMENTS.—(1) Crime control and detection instruments and equipment shall be approved for export by the Director only pursuant to a validated export license.

(2) The provisions of this subsection shall not apply with respect to exports to countries which are members of the

North Atlantic Treaty Organization or to Japan, Australia, or New Zealand, or to such other countries as the President shall designate consistent with the purposes of this subsection and section 502B of the Foreign Assistance Act of 1961.

(k) CONTROL LIST.—The Director shall establish and maintain, as part of the commodity control list, a list of any goods or technology subject to export controls under this section, and the countries to which such controls apply. Such goods or technology shall be clearly identified as subject to controls under this section. Such list shall consist of goods and technology identified by the Secretary of State, with the concurrence of the Director. If the Director and the Secretary of State are unable to agree on the list, the matter shall be referred by the Director to the President. Such list shall be reviewed not less frequently than every three years in the case of controls maintained cooperatively with other countries, and annually in the case of all other controls, for the purpose of making such revisions as are necessary in order to carry out this section. During the course of such review, an assessment shall be made periodically of the availability from sources outside the United States, or any of its territories or possessions, of goods and technology comparable to those controlled for export from the United States under this section.

SHORT SUPPLY CONTROLS

SEC. 9. (a) AUTHORITY.—(1) In order to carry out the policy set forth in section 3(2)(C) of this Act, the President may prohibit or curtail the export of any goods subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. In curtailing exports to carry out the policy set forth in section 3(2)(C) of this Act, the President shall allocate a portion of export licenses on the basis of factors other than a prior history of exportation. Such factors shall include the extent to which a country engages in equitable trade practices with respect to United States goods and treats the United States equitably in times of short supply.

(2) Upon imposing quantitative restrictions on exports of any goods to carry out the policy set forth in section 3(2)(C) of this Act, the Director shall include in a notice published in the Federal Register with respect to such restrictions an invitation to all interested parties to submit written comments within fifteen days from the date of publication on the impact of such restrictions and the method of licensing used to implement them.

(3) In imposing export controls under this section, the President's authority shall include, but not be limited to, the imposition of export license fees.

(b) MONITORING.—(1) In order to carry out the policy set forth in section 3(2)(C) of this Act, the Secretary of Commerce shall monitor exports, and contracts for exports, of any good (other than a commodity which is subject to the reporting requirements of section 812 of the Agricultural Act of 1970) when the volume of such exports in relation to domestic supply contributes, or may contribute, to an increase in domestic prices or a domestic shortage, and such price increase or shortage has, or may have, a serious adverse impact on the economy or any sector thereof. Any such monitoring shall commence at a time adequate to assure that the monitoring will result in a data base sufficient to enable policies to be developed, in accordance with section 3(2)(C) of this Act, to mitigate a short supply situation or serious inflationary price rise or, if export controls are needed, to permit imposition of such controls in a timely manner. Information which the Secretary of Commerce requires to be furnished in effecting such monitoring shall be confidential, except as provided in paragraph (2) of this subsection.

(2) The results of such monitoring shall, to the extent practicable, be aggregated and included in weekly reports setting forth, with respect to each item monitored, actual and anticipated exports, the destination by country, and the domestic and worldwide price, supply, and demand. Such reports may be made monthly if the Secretary of Commerce

determines that there is insufficient information to justify weekly reports.

(3) The Director shall consult with the Secretary of Energy to determine whether monitoring or export controls under this section are warranted with respect to exports of facilities, machinery, or equipment normally and principally used, or intended to be used, in the production, conversion, or transportation of fuels and energy (except nuclear energy), including, but not limited to, drilling rigs, platforms, and equipment; petroleum refineries, natural gas processing, liquefaction, and gasification plants; facilities for production of synthetic natural gas or synthetic crude oil; oil and gas pipelines, pumping stations, and associated equipment; and vessels for transporting oil, gas, coal, and other fuels.

(c) PETITIONS FOR MONITORING OR CONTROLS.—(1)(A) Any entity, including a trade association, firm, or certified or recognized union or group of workers, which is representative of an industry or a substantial segment of an industry which processes metallic materials capable of being recycled with respect to which an increase in domestic prices or a domestic shortage, either of which results from increased exports, has or may have a significant adverse effect on the national economy or any sector thereof, may transmit a written petition to the Director requesting the monitoring of exports, or the imposition of export controls, or both, with respect to such material, in order to carry out the policy set forth in section 3(2)(C) of this Act.

(B) Each petition shall be in such form as the Director shall prescribe and shall contain information in support of the action requested. The petition shall include any information reasonably available to the petitioner indicating (i) that there has been a significant increase, in relation to a specific period of time, in exports of such material in relation to domestic supply, and (ii) that there has been a significant increase in the price of such material or a domestic shortage of such material under circumstances indicating the price increase or domestic shortage may be related to exports.

(2) Within fifteen days after receipt of any petition described in paragraph (1), the Director shall publish a notice in the Federal Register. The notice shall (A) include the name of the material which is the subject of the petition, (B) include the Schedule B number of the material as set forth in the Statistical Classification of Domestic and Foreign Commodities Exported from the United States, (C) indicate whether the petitioner is requesting that controls or monitoring, or both, be imposed with respect to the exportation of such material, and (D) provide that interested persons shall have a period of thirty days commencing with the date of publication of such notice to submit to the Director written data, views, or arguments, with or without opportunity for

oral presentation, with respect to the matter involved. At the request of the petitioner or any other entity described in paragraph (1)(A) with respect to the material which is the subject of the petition, or at the request of any entity representative of producers or exporters of such material, the Director shall conduct public hearings with respect to the subject of the petition, in which case the thirty-day period may be extended to forty-five days.

(3) Within forty-five days after the end of the thirty- or forty-five-day period described in paragraph (2), as the case may be, the Director, in consultation with the Secretary of Commerce, shall—

(A) determine to impose monitoring or controls, or both, on the export of such material, in order to carry out the policy set forth in section 3(2)(C) of this Act; and

(B) publish in the Federal Register a detailed statement of the reasons for such determination.

(4) Within fifteen days after making a determination under paragraph (3) to impose monitoring or controls on the export of a material, the Director shall publish in the Federal Register proposed regulations with respect to such monitoring or controls. Within thirty days following the publication of such proposed regulations, and after considering any public

comments thereon, the Director shall publish and implement final regulations with respect to such monitoring or controls.

(5) For purposes of publishing notices in the Federal Register and scheduling public hearings pursuant to this subsection, the Director may consolidate petitions, and responses thereto, which involve the same or related materials.

(6) If a petition with respect to a particular material or group of materials has been considered in accordance with all the procedures prescribed in this subsection, the Director may determine, in the absence of significantly changed circumstances, that any other petition with respect to the same material or group of materials which is filed within 6 months after consideration of the prior petition has been completed does not merit complete consideration under this subsection.

(7) The procedures and time limits set forth in this subsection with respect to a petition filed under this subsection shall take precedence over any review undertaken at the initiative of the Director with respect to the same subject as that of the petition.

(8) The Director may impose monitoring or controls on a temporary basis after a petition is filed under paragraph (1)(A) but before the Director makes a determination under paragraph (3) if the Director considers such action to be necessary to carry out the policy set forth in section 3(2)(C) of this Act.

(9) The authority under this subsection shall not be construed to affect the authority of the Director under any other provision of this Act.

(10) Nothing contained in this subsection shall be construed to preclude submission on a confidential basis to the Director of information relevant to a decision to impose or remove monitoring or controls under the authority of this Act, or to preclude consideration of such information by the Director in reaching decisions required under this subsection. The provisions of this paragraph shall not be construed to affect the applicability of section 552(b) of title 5, United States Code.

(d) DOMESTICALLY PRODUCED CRUDE OIL.—(1) Notwithstanding any other provision of this Act and notwithstanding subsection (u) of section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), no domestically produced crude oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) (except any such crude oil which (A) is exported to an adjacent foreign country to be refined and consumed therein in exchange for the same quantity of crude oil being exported from that country to the United States; such exchange must result through convenience or increased efficiency of transportation in lower prices for consumers of petroleum products in the United States as described in paragraph (2)(A)(ii) of this subsection, or (B) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign country and reenters the United States) may be exported from the United States, or any of its territories and possessions, unless the requirements of paragraph (2) of this subsection are met.

(2) Crude oil subject to the prohibition contained in paragraph (1) may be exported only if—

(A) the President makes and publishes express findings that exports of such crude oil, including exchanges—

(i) will not diminish the total quantity or quality of petroleum refined within, stored within, or legally committed to be transported to and sold within the United States;

(ii) will, within three months following the initiation of such exports or exchanges, result in (I) acquisition costs to the refiners which purchase the imported crude oil being lower than the acquisition costs such refiners would have to pay for the domestically produced oil in the absence of such an export or exchange, and (II) not less than 75 per centum of such savings in costs being reflected in wholesale and retail prices of products refined from such imported crude oil;

(iii) will be made only pursuant to contracts which may be terminated if the crude oil supplies of the United States are interrupted, threatened, or diminished;

(iv) are clearly necessary to protect the national interest; and

(v) are in accordance with the provisions of this Act; and

(B) the President reports such findings to the Congress and the Congress, within fifty days thereafter, agrees to a concurrent resolution approving such exports on the basis of the findings.

(3) Notwithstanding any other provision of this section or any other provision of law, including subsection (u) of section 28 of the Mineral Leasing Act of 1920, the President may export oil to any country pursuant to a bilateral international oil supply agreement entered into by the United States with such nation before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency.

(e) REFINED PETROLEUM PRODUCTS.—(1) No refined petroleum product may be exported except pursuant to an export license specifically authorizing such export. Not later than five days after an application for a license to export any refined petroleum product or residual fuel oil is received, the

Director shall notify the Congress of such application, together with the name of the exporter, the destination of the proposed export, and the amount and price of the proposed export. Such notification shall be made to the chairman of the Committee on Foreign Affairs of the House of Representatives and the chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) The Director may not grant such license during the thirty-day period beginning on the date on which notification to the Congress under paragraph (1) is received, unless the President certifies in writing to the Speaker of the House of Representatives and the President pro tempore of the Senate that the proposed export is vital to the national interest and that a delay in issuing the license would adversely affect that interest.

(3) This subsection shall not apply to (A) any export license application for exports to a country with respect to which historical export quotas established on the basis of past trading relationships apply, or (B) any license application for exports to a country if exports under the license would not result in more than two hundred and fifty thousand barrels of refined petroleum products being exported from the United States to such country in any fiscal year.

(4) For purposes of this subsection, "refined petroleum product" means gasoline, kerosene, distillates, propane or

butane gas, diesel fuel, and residual fuel oil refined within the United States or entered for consumption within the United States.

(5) The Director may extend any time period prescribed in section 12 of this Act to the extent necessary to take into account delays in action by the Director on a license application on account of the provisions of this subsection.

(f) CERTAIN PETROLEUM PRODUCTS.—Petroleum products refined in United States Foreign Trade Zones, or in the United States Territory of Guam, from foreign crude oil shall be excluded from any quantitative restrictions imposed under this section except that, if the Director finds that a product is in short supply, the Director may issue such regulations as may be necessary to limit exports.

(g) AGRICULTURAL COMMODITIES.—(1) The authority conferred by this section shall not be exercised with respect to any agricultural commodity, including fats and oils or animal hides or skins, without the approval of the Secretary of Agriculture. The Secretary of Agriculture shall not approve the exercise of such authority with respect to any such commodity during any period for which the supply of such commodity is determined by the Secretary of Agriculture to be in excess of the requirements of the domestic economy except to the extent the President determines that such exercise of authority is required to carry out the policies set forth in subparagraph (A) or (B) of paragraph (2) of section 3 of this Act. The Secretary of Agriculture shall, by exercising the authorities which the Secretary of Agriculture has under other applicable provisions of law, collect data with respect to export sales of animal hides and skins.

(2) Upon approval of the Director, in consultation with the Secretary of Agriculture, agricultural commodities purchased by or for use in a foreign country may remain in the United States for export at a later date free from any quantitative limitations on export which may be imposed to carry out the policy set forth in section 3(2)(C) of this Act subsequent to such approval. The Director may not grant such approval unless the Director receives adequate assurance and, in conjunction with the Secretary of Agriculture, finds (A) that such commodities will eventually be exported, (B) that neither the sale nor export thereof will result in an excessive drain of scarce materials and have a serious domestic inflationary impact, (C) that storage of such commodities in the United States will not unduly limit the space available for storage of domestically owned commodities, and (D) that the purpose of such storage is to establish a reserve of such commodities for later use, not including resale to or use by another country. The Director may issue such regulations as may be necessary to implement this paragraph.

(3) If the authority conferred by this section or section is exercised to prohibit or curtail the export of any agricultural commodity in order to carry out the policies set forth in subparagraph (B) or (C) of paragraph (2) of section 3 of this Act, the President shall immediately report such prohibition or curtailment to the Congress, setting forth the reasons therefor in detail. If the Congress, within thirty days after the date of its receipt of such report, adopts a concurrent resolution disapproving such prohibition or curtailment, then such prohibition or curtailment shall cease to be effective with the adoption of such resolution. In the computation of such thirty-day period, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days to a day certain or because of an adjournment of the Congress sine die.

(h) BARTER AGREEMENTS.—(1) The exportation pursuant to a barter agreement of any goods which may lawfully be exported from the United States, for any goods which may lawfully be imported into the United States, may be exempted, in accordance with paragraph (2) of this subsection, from any quantitative limitation on exports (other than any reporting requirement) imposed to carry out the policy set forth in section 3(2)(C) of this Act.

(2) The Director shall grant an exemption under paragraph (1) if the Director finds, after consultation with the

appropriate department or agency of the United States, that—

(A) for the period during which the barter agreement is to be performed—

(i) the average annual quantity of the goods to be exported pursuant to the barter agreement will not be required to satisfy the average amount of such goods estimated to be required annually by the domestic economy and will be surplus thereto; and

(ii) the average annual quantity of the goods to be imported will be less than the average amount of such goods estimated to be required annually to supplement domestic production; and

(B) the parties to such barter agreement have demonstrated adequately that they intend, and have the capacity, to perform such barter agreement.

(3) For purposes of this subsection, the term "barter agreement" means any agreement which is made for the exchange, without monetary consideration, of any goods produced in the United States for any goods produced outside of the United States.

(4) This subsection shall apply only with respect to barter agreements entered into after the effective date of the Export Administration Act of 1979.

(i) UNPROCESSED RED CEDAR.—(1) The Director shall require a validated license, under the authority contained in subsection (a) of this section, for the export of unprocessed western red cedar (thuja plicata) logs, harvested from State or Federal lands. The Director shall impose quantitative restrictions upon the export of unprocessed western red cedar logs during the three-year period beginning on the effective date of the Export Administration Act of 1979 as follows:

(A) Not more than thirty million board feet scribner of such logs may be exported during the first year of such three-year period.

(B) Not more than fifteen million board feet scribner of such logs may be exported during the second year of such period.

(C) Not more than five million board feet scribner of such logs may be exported during the third year of such period.

After the end of such three-year period, no unprocessed western red cedar logs may be exported from the United States.

(2) The Director shall allocate export licenses to exporters pursuant to this subsection on the basis of a prior history of exportation by such exporters and such other factors as the Director considers necessary and appropriate to minimize any hardship to the producers of western red cedar and to further the foreign policy of the United States.

(3) Unprocessed western red cedar logs shall not be considered to be an agricultural commodity for purposes of subsection (g) of this section.

(4) As used in this subsection, the term "unprocessed western red cedar" means red cedar timber which has not been processed into—

(A) lumber without wane;

(B) chips, pulp, and pulp products;

(C) veneer and plywood;

(D) poles, posts, or pilings cut or treated with preservative for use as such and not intended to be further processed; or

(E) shakes and shingles.

(j) EXPORT OF HORSES.—(1) Notwithstanding any other provision of this Act, no horse may be exported by sea from the United States, or any of its territories and possessions, unless such horse is part of a consignment of horses with respect to which a waiver has been granted under paragraph (2) of this subsection.

(2) The Director, in consultation with the Secretary of Agriculture, may issue regulations providing for the granting of waivers permitting the export by sea of a specified consignment of horses, if the Director, in consultation with the Secretary of Agriculture, determines that no horse in that consignment is being exported for purposes of slaughter.

FOREIGN BOYCOTTS

SEC. 10. (a) PROHIBITIONS AND EXCEPTIONS.—(1) For the purpose of implementing the policies set forth in subparagraph (A) or (B) of paragraph (5) of section 3 of this Act, the President shall issue regulations prohibiting any United States person, with respect to his activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation:

(A) Refusing, or requiring any other person to refuse, to do business with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, pursuant to an agreement with, a requirement of, or a request from or on behalf of the boycotting country. The mere absence of a business relationship with or in the boycotted country with any business concern organized under the laws of the boycotted country with any national or resident of the boycotted country, or with any other person, does not indicate the existence of the intent required to establish a violation of regulations issued to carry out this subparagraph.

(B) Refusing, or requiring any other person to refuse, to employ or otherwise discriminating against any United States person on the basis of race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person.

(C) Furnishing information with respect to the race, religion, sex, or national origin of any United States person or of any owner, officer, director, or employee of such person.

(D) Furnishing information about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person which is known or believed to be restricted from having any business relationship with or in the boycotting country. Nothing in this paragraph shall prohibit the furnishing of normal business information in a commercial context as defined by the Director.

(E) Furnishing information about whether any person is a member of, has made contributions to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the boycotted country.

(F) Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any condition or requirement compliance with which is prohibited by regulations issued pursuant to this paragraph, and no United States person shall, as a result of the application of this paragraph, be obligated to pay or otherwise honor or implement such letter of credit.

(2) Regulations issued pursuant to paragraph (1) shall provide exceptions for—

(A) complying or agreeing to comply with requirements (i) prohibiting the import of goods or services from the boycotted country or goods produced or services provided by any business concern organized under the laws of the boycotted country or by nationals or residents of the boycotted country, or (ii) prohibiting the shipment of goods to the boycotting country on a carrier of the boycotted country, or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

(B) complying or agreeing to comply with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment or the name of the provider of other services, except that no information knowingly furnished or conveyed in response to such requirements may be stated in negative, blacklisting, or similar exclusionary terms, other than with respect to carriers or route of shipment as may be permitted by such regulations in order to comply with precautionary requirements protecting against war risks and confiscation;

(C) complying or agreeing to comply in the normal course of business with the unilateral and specific selection by the boycotting country, or national or resident thereof, of carriers, insurers, suppliers of services to be performed within the boycotting country or specific goods which, in the normal course of business, are identifiable by source when imported into the boycotting country;

(D) complying or agreeing to comply with export requirements of the boycotting country relating to shipments or transshipments of exports to the boycotted country, to any business concern of or organized under the laws of the boycotted country, or to any national or resident of the boycotted country;

(E) compliance by an individual or agreement by an individual to comply with the immigration or passport requirements of any country with respect to such individual or any member of such individual's family or with requests for information regarding requirements of employment of such individual within the boycotting country; and

(F) compliance by a United States person resident in a foreign country or agreement by such person to comply with the laws of that country with respect to his activities exclusively therein, and such regulations may contain exceptions for such resident complying with the laws or regulations of that foreign country governing imports into such country of trademarked, trade named, or similarly specifically identifiable products, or components of products for his own use, including the performance of contractual services within that country, as may be defined by such regulations.

(3) Regulations issued pursuant to paragraphs (2)(C) and (2)(F) shall not provide exceptions from paragraphs (1)(B) and (1)(C).

(4) Nothing in this subsection may be construed to supersede or limit the operation of the antitrust or civil rights laws of the United States.

(5) This section shall apply to any transaction or activity undertaken, by or through a United States person or any other person, with intent to evade the provisions of this section as implemented by the regulations issued pursuant to this subsection, and such regulations shall expressly provide that the exceptions set forth in paragraph (2) shall not permit activities or agreements (expressed or implied by a course of conduct, including a pattern of responses) otherwise prohibited, which are not within the intent of such exceptions.

(b) Foreign Policy Controls.—(1) In addition to the regulations issued pursuant to subsection (a) of this section, regulations issued under section 8 of this Act shall implement the policies set forth in section 3(5).

(2) Such regulations shall require that any United States person receiving a request for the furnishing of information, the entering into or implementing of agreements, or the taking of any other action referred to in section 3(5) shall report that fact to the Director, together with such other information concerning such request as the Director may require for such action as the Director considers appropriate for carrying out the policies of that section. Such person shall also report to the Director whether such person intends to

comply and whether such person has complied with such request. Any report filed pursuant to this paragraph shall be made available promptly for public inspection and copying, except that information regarding the quantity, description, and value of any goods or technology to which such report relates may be kept confidential if the Director determines that disclosure thereof would place the United States person involved at a competitive disadvantage. The Director shall periodically transmit summaries of the information contained in such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Director, considers appropriate for carrying out the policies set forth in section 3(5) of this Act.

(c) PREEMPTION.—The provisions of this section and the regulations issued pursuant thereto shall preempt any law, rule, or regulation of any of the several States or the District of Columbia, or any of the territories or possessions of the United States, or of any governmental subdivision thereof, which law, rule, or regulation pertains to participation in, compliance with, implementation of, or the furnishing of information regarding restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries.

PROCEDURES FOR HARDSHIP RELIEF FROM EXPORT CONTROLS

SEC. 11. (a) FILING OF PETITIONS.—Any person who, in such person's domestic manufacturing process or other domestic business operation, utilizes a product produced abroad in whole or in part from a good historically obtained from the United States but which has been made subject to export controls, or any person who historically has exported such a good, may transmit a petition of hardship to the Director requesting an exemption from such controls in order to alleviate any unique hardship resulting from the imposition of such controls. A petition under this section shall be in such form as the Director shall prescribe and shall contain information demonstrating the need for the relief requested.

(b) DECISION OF THE DIRECTOR.—Not later than thirty days after receipt of any petition under subsection (a), the Director shall transmit a written decision to the petitioner granting or denying the requested relief. Such decision shall contain a statement setting forth the Director's basis for the grant or denial. Any exemption granted may be subject to such conditions as the Director considers appropriate.

(c) FACTORS TO BE CONSIDERED.—For purposes of this section, the Director's decision with respect to the grant of denial of relief from unique hardship resulting directly or indirectly from the imposition of export controls shall reflect the Director's consideration of factors such as the following:

(1) Whether denial would cause a unique hardship to the petitioner which can be alleviated only by granting an exception to the applicable regulations. In determining whether relief shall be granted, the Director shall take into account—

(A) ownership of material for which there is no practicable domestic market by virtue of the location or nature of the material;

(B) potential serious financial loss to the applicant if not granted an exception;

(C) inability to obtain, except through import, an item essential for domestic use which is produced abroad from the good under control;

(D) the extent to which denial would conflict, to the particular detriment of the applicant, with other national policies including those reflected in any international agreement to which the United States is a party;

(E) possible adverse effects on the economy (including unemployment) in any locality or region of the United States; and

(F) other relevant factors, including the applicant's lack of an exporting history during any base period that may be established with respect to export quotas for the particular good.

(2) The effect a finding in favor of the applicant would have on attainment of the basic objectives of the short supply control program.

In all cases, the desire to sell at higher prices and thereby obtain greater profits shall not be considered as evidence of a unique hardship, nor will circumstances where the hardship is due to imprudent acts or failure to act on the part of the petitioner.

PROCEDURES FOR PROCESSING EXPORT LICENSE APPLICATIONS

SEC. 12. (a) PRIMARY RESPONSIBILITY OF THE DIRECTOR.—(1) All export license applications required under this Act shall be submitted by the applicant to the Director. All determinations with respect to any such application shall be made by the Director, subject to the procedures provided in this section.

(2) It is the intent of the Congress that a determination with respect to any export license application be made to the maximum extent possible by the Director without referral of such application to any other department or agency of the Government.

(3) To the extent necessary, the Director shall seek information and recommendations from the Government de-

partments and agencies concerned with aspects of United States domestic and foreign policies and operations having an important bearing on exports. Such departments and agencies shall cooperate fully in rendering such information and recommendations.

(b) INITIAL SCREENING.—Within ten days after the date on which any export license application is submitted pursuant to subsection (a)(1), the Director shall—

(1) send the applicant an acknowledgment of the receipt of the application and the date of the receipt;

(2) submit to the applicant a written description of the procedures required by this section, the responsibilities of the Director and of other departments and agencies with respect to the application, and the rights of the applicant;

(3) return the application without action if the application is improperly completed or if additional information is required, with sufficient information to permit the application to be properly resubmitted, in which case if such application is resubmitted, it shall be treated as a new application for the purpose of calculating the time periods prescribed in this section;

(4) determine whether it is necessary to refer the application to any other department or agency and, if such referral is determined to be necessary, inform the

applicant of any such department or agency to which the application will be referred; and

(5) determine whether it is necessary to submit the application to a multilateral review process, pursuant to a multilateral agreement, formal or informal, to which the United States is a party and, if so, inform the applicant of this requirement.

(c) ACTION ON CERTAIN APPLICATIONS.—In each case in which the Director determines that it is not necessary to refer an application to any other department or agency for its information and recommendations, a license shall be formally issued or denied within ninety days after a properly completed application has been submitted pursuant to this section.

(d) REFERRAL TO OTHER DEPARTMENTS AND AGENCIES.—In each case in which the Director determines that it is necessary to refer an application to any other department or agency for its information and recommendations, the Director shall, within thirty days after the submission of a properly completed application—

(1) refer the application, together with all necessary analysis and recommendations of the Office, concurrently to all such departments or agencies; and

(2) if the applicant so requests, provide the applicant with an opportunity to review for accuracy any

documentation to be referred to any such department or agency with respect to such application for the purpose of describing the export in question in order to determine whether such documentation accurately describes the proposed export.

(e) ACTION BY OTHER DEPARTMENTS AND AGENCIES.—(1) Any department or agency to which an application is referred pursuant to subsection (d) shall submit to the Director, within thirty days after its receipt of the application, the information or recommendations requested with respect to such application. Except as provided in paragraph (2), any such department or agency which does not submit its recommendations within the time period prescribed in the preceding sentence shall be deemed by the Director to have no objection to the approval of such application.

(2) If the head of any such department or agency notifies the Director before the expiration of the time period provided in paragraph (1) for submission of its recommendations that more time is required for review by such department or agency, such department or agency shall have an additional thirty-day period to submit its recommendations to the Director. If such department or agency does not submit its recommendations within the time period prescribed by the preceding sentence, it shall be deemed by the Director to have no objection to the approval of such application.

(f) ACTION BY THE DIRECTOR.—(1) Within ninety days after receipt of the recommendations of other departments and agencies with respect to a license application, as provided in subsection (e), the Director shall formally issue or deny the license. In deciding whether to issue or deny a license, the Director shall take into account any recommendation of a department or agency with respect to the application in question. In cases where the Director receives conflicting recommendations, the Director shall, within the ninety-day period provided for in this subsection, take such action as may be necessary to resolve such conflicting recommendations.

(2) In cases where the Director receives questions or negative considerations or recommendations from any other department or agency with respect to an application, the Director shall, to the maximum extent consistent with the national security and foreign policy of the United States, inform the applicant of the specific questions raised and any such negative considerations or recommendations, and shall accord the applicant an opportunity, before the final determination with respect to the application is made, to respond in writing to such questions, considerations, or recommendations.

(3) In cases where the Director has determined that an application should be denied, the applicant shall be informed in writing, within five days after such determination is made,

of the determination, of the statutory basis for denial, the policies set forth in section 3 of the Act which would be furthered by denial, and, to the extent consistent with the national security and foreign policy of the United States, the specific considerations which led to the denial, and of the availability of appeal procedures. In the event decisions on license applications are deferred inconsistent with the provisions of this section, the applicant shall be so informed in writing within five days after such deferral.

(4) If the Director determines that a particular application or set of applications is of exceptional importance and complexity, and that additional time is required for negotiations to modify the application or applications, the director may extend any time period prescribed in this section. The Director shall notify the Congress and the applicant of such extension and the reasons therefor.

(g) SPECIAL PROCEDURES FOR SECRETARY OF DEFENSE.—(1) Notwithstanding any other provision of this section, the Secretary of Defense is authorized to review any proposed export of any goods or technology to any country to which exports are controlled for national security purposes and, whenever the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of any such country, to recommend to the President that such export be disapproved.

(2) Notwithstanding any other provision of law, the Secretary of Defense shall determine, in consultation with the Director, and confirm in writing the types and categories of transactions which should be reviewed by the Secretary of Defense in order to make a determination referred to in paragraph (1). Whenever a license or other authority is requested for the export to any country to which exports are controlled for national security purposes of goods or technology within, any such type or category, the Director shall notify the Secretary of Defense of such request, and the Director may not issue any license or other authority pursuant to such request before the expiration of the period within which the President may disapprove such export. The Secretary of Defense shall carefully consider any notification submitted by the Director pursuant to this paragraph and, not later than thirty days after notification of the request, shall—

(A) recommend to the President that he disapprove any request for the export of the goods or technology involved to the particular country if the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of such country or any other country;

(B) notify the Director that he would recommend approval subject to specified conditions; or

(C) recommend to the Director that the export of goods or technology be approved.

If the President notifies the Director, within thirty days after receiving a recommendation from the Secretary of Defense, that he disapproves such export, no license or other authority may be issued for the export of such goods or technology to such country.

(3) The Director shall approve or disapprove a license application, and issue or deny a license, in accordance with the provisions of this subsection, and, to the extent applicable, in accordance with the time periods and procedures otherwise set forth in this section.

(4) Whenever the President exercises his authority under this subsection to modify or overrule a recommendation made by the Secretary of Defense or exercises his authority to modify or overrule any recommendation made by the Secretary of Defense under subsection (c) or (d) of section 7 of this Act with respect to the list of goods and technologies controlled for national security purposes, the President shall promptly transmit to the Congress a statement indicating his

decision, together with the recommendation of the Secretary of Defense.

(h) MULTILATERAL CONTROLS.—In any case in which an application, which has been finally approved under subsection (c), (f), or (g) of this section, is required to be submitted to a multilateral review process, pursuant to a multilateral agreement, formal or informal, to which the United States is a party, the license shall not be issued as prescribed in such subsections, but the Director shall notify the applicant of the approval of the application (and the date of such approval) by the Director subject to such multilateral review. The license shall be issued upon approval of the application under such multilateral review. If such multilateral review has not resulted in a determination with respect to the application within sixty days after such date, the Director's approval of the license shall be final and the license shall be issued, unless the Director determines that issuance of the license would prove detrimental to the national security of the United States. At the time at which the Director makes such a determination, the Director shall notify the applicant of the determination and shall notify the Congress of the determination, the reasons for the determination, the reasons for which the multilateral review could not be concluded within such sixty-day period, and the actions planned or being taken by the United States Government to secure conclusion of the multilateral review. At the end of every sixty-day period after such notification to Congress, the Director shall advise the applicant and the Congress of the status of the application, and shall report to the Congress in detail on the reasons for the further delay and any further actions being taken by the United States Government to secure conclusion of the multilateral review. In addition, at the time at which the Director issues or denies the license upon conclusion of the multilateral review, the Director shall notify the Congress of such issuance or denial and of the total time required for the multilateral review.

(i) RECORDS.—The Director and any department or agency to which any application is referred under this section shall keep accurate records with respect to all applications considered by the Director or by any such department or agency, including, in the case of the Director, any dissenting recommendations received from any such department or agency.

(j) APPEAL AND COURT ACTION.—(1) The Director shall establish appropriate procedures for any applicant to appeal to the Director the denial of an export license application of the applicant.

(2) In any case in which any action prescribed in this section is not taken on a license application within the time periods established by this section (except in the case of a

time period extended under subsection (f)(4) of which the applicant is notified), the applicant may file a petition with the Director requesting compliance with the requirements of this section. When such petition is filed, the Director shall take immediate steps to correct the situation giving rise to the petition and shall immediately notify the applicant of such steps.

(3) If, within thirty days after a petition is filed under paragraph (2), the processing of the application has not been brought into conformity with the requirements of this section, or the application has been brought into conformity with such requirements but the director has not so notified the applicant, the applicant may bring an action in an appropriate United States district court for a restraining order, a temporary or permanent injunction, or other appropriate relief, to require compliance with the requirements of this section. The United States district courts shall have jurisdiction to provide such relief, as appropriate.

VIOLATIONS

SEC. 13. (a) IN GENERAL.—Except as provided in subsection (b) of this section, whoever knowingly violates any provision of this Act or any regulation, order, or license issued thereunder shall be fined not more than five times the value of the exports involved or $50,000, whichever is greater, or imprisoned not more than five years, or both.

(b) WILLFUL VIOLATIONS.—(1) Whoever willfully exports anything contrary to any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that such exports will be used for the benefit of any country to which exports are restricted for national security or foreign policy purposes—

(A) except in the case of an individual, shall be fined not more that five times the value of the exports involved or $1,000,000, whichever is greater; and

(B) in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than ten years, or both.

(2) Any person who is issued a validated license under this Act for the export of any good or technology to a controlled country and who, with knowledge that such a good or technology is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense—

(A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and

(B) in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than five years, or both.

For the purpose of this paragraph, the term "controlled country" means any country described in section 620(f) of the Foreign Assistance Act of 1961.

(c) CIVIL PENALTIES; ADMINISTRATIVE SANCTIONS.—(1) The head of any department or agency exercising any functions under this Act, or any officer or employee of such department or agency specifically designated by the head thereof, may impose a civil penalty not to exceed $10,000 for each violation of this Act or any regulation, order, or license issued under this Act, either in addition to or in lieu of any other liability or penalty which may be imposed, except that the civil penalty for each such violation involving national security controls imposed under section 7 of this Act or controls imposed on the export of defense articles and defense services under section 38 of the Arms Export Control Act may not exceed $100,000.

(2)(A) The authority under this Act to suspend or revoke the authority of any United States person to export goods or technology may be used with respect to any violation of the regulations issued pursuant to section 10(a) of this Act.

(B) Any administrative sanction (including any civil penalty or any suspension or revocation of authority to export) imposed under this Act for a violation of the regulations issued pursuant to section 10(a) of this Act may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code.

(C) Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the regulations issued pursuant to section 10(a) of this Act shall be made available for public inspection and copying.

(d) PAYMENT OF PENALTIES.—The payment of any penalty imposed pursuant to subsection (c) may be made a condition, for a period not exceeding one year after the imposition of such penalty, to the granting, restoration, or continuing validity of any export license, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed. In addition, the payment of any penalty imposed under subsection (c) may be deferred or suspended in whole or in part for a period of time no longer than any probation period (which may exceed one year) that may be imposed upon such person. Such a deferral or suspension shall not operate as a bar to the collection of the penalty in the event that the conditions of the suspension, deferral, or probation are not fulfilled.

(e) REFUNDS.—Any amount paid in satisfaction of any penalty imposed pursuant to subsection (c) shall be covered into the Treasury as a miscellaneous receipt. The head of the department or agency concerned may, in his discretion, refund any such penalty, within two years after payment, on the ground of a material error of fact or law in the imposition of the penalty. Notwithstanding section 1346(a) of title 28, United States Code, no action for the refund of any such penalty may be maintained in any court.

(f) ACTIONS FOR RECOVERY OF PENALTIES.—In the event of the failure of any person to pay a penalty imposed pursuant to subsection (c), a civil action for the recovery thereof may, in the discretion of the head of the department or agency concerned, be brought in the name of the United States. Except as provided in this subsection and in subsection (d), no such liability shall be asserted, claimed, or recovered upon by the United States in any way unless it has previously been reduced to judgment.

(g) OTHER AUTHORITIES.—Nothing in subsection (c), (d), or (f) limits—

(1) the availability of other administrative or judicial remedies with respect to violations of this Act, or any regulation, order, or license issued under this Act;

(2) the authority to compromise and settle administrative proceedings brought with respect to violations of this Act, or any regulation, order, or license issued under this Act; or

(3) the authority to compromise, remit or mitigate seizures and forfeitures pursuant to section 1(b) of title VI of the Act of June 15, 1917 (22 U.S.C. 401(b)).

ENFORCEMENT

SEC. 14. (a) GENERAL AUTHORITY.—To the extent necessary or appropriate to the enforcement of this Act or to the imposition of any penalty, forfeiture, or liability arising under the Export Control Act of 1949, the Export Administration Act of 1969, or the Export Administration Act of 1979, the head of any department or agency exercising any function thereunder (and officers or employees of such department or agency specifically designated by the head thereof) may make such investigations and obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises, or property of, and take the sworn testimony of, any person. In addition, such officers or employees may administer oaths or affirmations, and may by subpena require any person to appear and testify or to appear and produce books, records, and other writings, or both, and in the case of contumacy by, or refusal to obey a subpena issued to, any such person, a district court of the United States, after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) IMMUNITY.—No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of section 6002 of title 18, United States Code, shall apply with respect to any individual who specifically claims such privilege.

(c) CONFIDENTIALITY.—(1) Except as otherwise provided by the third sentence of section 10(b)(2) and by section 13(c)(2)(C) of this Act, information obtained under this Act on or before the date of enactment of this Act, which is deemed confidential, including Shippers' Export Declarations, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall be exempt from disclosure under section 552 of title 5, United States Code, and such information shall not be published or disclosed unless the Director in his sole discretion determines that the withholding thereof is contrary to the national interest. Information obtained under this Act or the Export Administration Act of 1979 after June 30, 1980, may be withheld only to the extent permitted by statute, except that information obtained for the purpose of consideration of, or concerning, license applications under this Act or the Export Administration Act of 1979 shall be withheld from public disclosure unless the release of such information is determined by the Director in his sole discretion to be in the national interest. This subsection shall not affect any judicial proceeding commenced under section 552 of title 5, United States Code, to obtain access to boycott reports submitted prior to October 31, 1976, which was pending on May 15, 1979; but such proceeding shall be continued as if this Act had not been enacted.

(2) Nothing in this Act shall be construed as authorizing the withholding of information from the Congress or from the General Accounting Office. All information obtained at any time under this Act or previous Acts regarding the control of exports, including any report or license application required under this Act, shall be made available to any committee or subcommittee of Congress of appropriate jurisdiction upon request of the chairman or ranking minority member of such committee or subcommittee. No such committee or subcommittee, or member thereof, shall disclose any information obtained under this Act or previous Acts regarding the control of exports which is submitted on a confidential basis unless the full committee determines that the withholding of that information is contrary to the national interest. Notwithstanding paragraph (1) of this subsection, information referred to in the second sentence of this paragraph shall, consistent with the protection of intelligence, counterintelligence,

and law enforcement sources, methods, and activities, as determined by the agency that originally obtained the information, and consistent with the provisions of section 313 of the Budget and Accounting Act, 1921, be make available only by that agency, upon request, to the Comptroller General of the United States or to any officer or employee of the General Accounting Office who is authorized by the Comptroller General to have access to such information. No officer or employee of the General Accounting Office shall disclose, except to the Congress in accordance with this paragraph, any such information which is submitted on a confidential basis and from which any individual can be identified.

(3) Departments or agencies which obtain information which is relevant to the enforcement of this Act shall furnish such information to the department or agency with enforcement responsibilities under this Act to the extent consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities, except that—

(A) the provisions of this paragraph shall not apply to information subject to the restrictions set forth in section 9 of title 13, United States Code; and

(B) return information, as defined in subsection (b) of section 6103 of the Internal Revenue Code of 1954, may be disclosed only as authorized by such section.

(d) REPORTING REQUIREMENTS.—In the administration of this Act, reporting requirements shall be so designed as to reduce the cost of reporting, recordkeeping, and export documentation required under this Act to the extent feasible consistent with effective enforcement and compilation of useful trade statistics. Reporting, recordkeeping, and export documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology.

(e) SIMPLIFICATION OF REGULATIONS.—The Director, in consultation with appropriate United States Government departments and agencies and with appropriate technical advisory committees established under section 7(g), shall review the regulations issued under this Act and the commodity control list in order to determine how compliance with the provisions of this Act can be facilitated by simplifying such regulations, by simplifying or clarifying such list, or by any other means.

EXEMPTION FROM CERTAIN PROVISIONS RELATING TO ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

SEC. 15. (a) EXEMPTION.—Except as provided in section 13(c)(2), the functions exercised under this Act are excluded from the operation of sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

(b) PUBLIC PARTICIPATION.—It is the intent of the Congress that, to the extent practicable, all regulations imposing controls on exports under this Act be issued in proposed form with meaningful opportunity for public comment before taking effect. In cases where a regulation imposing controls under this Act is issued with immediate effect, it is the intent of the Congress that meaningful opportunity for public comment also be provided and that the regulation be reissued in final form after public comments have been fully considered.

ANNUAL REPORT

SEC. 16. (a) CONTENTS.—Not later than December 31 of each year, the Director shall submit to the Congress a report on the administration of this Act during the preceding fiscal year. All agencies shall cooperate fully with the Director in providing information for such report. Such report shall include detailed information with respect to—

(1) the implementation of the policies set forth in section 3;

(2) general licensing activities under sections 7, 8, and 9, and any changes in the exercise of the authorities contained in sections 7(a), 8(a), and 9(a);

(3) the results of the review of United States policy toward individual countries pursuant to section 7(b);

(4) the results, in as much detail as may be included consistent with the national security and the need to maintain the confidentiality of proprietary information, of the actions, including reviews and revisions of export controls maintained for national security purposes, required by section 7(c)(3);

(5) actions taken to carry out section 7(b);

(6) changes in categories of items under export control referred to in section 7(e);

(7) determinations of foreign availability made under section 7(f), the criteria used to make such determinations, the removal of any export controls under such section, and any evidence demonstrating a need to impose export controls for national security purposes notwithstanding foreign availability;

(8) actions taken in compliance with section 7(f)(5);

(9) consultations with the technical advisory committees established pursuant to section 7(g), the use made of the advice rendered by such committees, and the contributions of such committees toward implementing the policies set forth in this Act;

(10) the effectiveness of export controls imposed under section 8 in furthering the foreign policy of the United States;

(11) export controls and monitoring under section 9;

(12) the information contained in the reports required by section 9(b)(2), together with an analysis of—

(A) the impact on the economy and world trade of shortages or increased prices for commodities subject to monitoring under this Act or section 812 of the Agricultural Act of 1970;

(B) the worldwide supply of such commodities; and

(C) actions being taken by other countries in response to such shortages or increased prices;

(13) actions taken by the President and the Director to carry out the antiboycott policies set forth in section 3(5) of this Act;

(14) organizational and procedural changes undertaken in furtherance of the policies set forth in this Act, including changes to increase the efficiency of the export licensing process and to fulfill the requirements of section 12, including an analysis of the time required to process license applications, the number and disposition of export license applications taking more than ninety days to process, and an accounting of appeals

received, court orders issued, and actions taken pursuant thereto under subsection (j) of such section;

(15) delegations of authority by the President as provided in section 6(e) of this Act;

(16) efforts to keep the business sector of the Nation informed with respect to policies and procedures adopted under this Act;

(17) any reviews undertaken in furtherance of the policies of this Act, including the results of the review required by section 14(d), and any action taken, on the basis of the review required by section 14(e), to simplify regulations issued under this Act;

(18) violations under section 13 and enforcement activities under section 14; and

(19) the issuance of regulations under the authority of this Act, including an explanation of each case in which regulations were not issued in accordance with the first sentence of section 15(b).

(b) REPORT ON CERTAIN EXPORT CONTROLS.—To the extent that the President determines that the policies set forth in section 3 of this Act require the control of the export of goods and technology other than those subject to multilateral controls, or require more stringent controls than the multilateral controls, the President shall include in each annual report the reasons for the need to impose, or to continue to impose, such controls and the estimated domestic economic impact on the various industries affected by such controls.

(c) REPORT ON NEGOTIATIONS.—The President shall include in each annual report a detailed report on the progress of the negotiations required by section 7(j), until such negotiations are concluded.

REGULATORY AUTHORITY

SEC. 17. The President and the Director may issue such regulations as are necessary to carry out the provisions of this Act. Any such regulations issued to carry out the provisions of section 7(a), 8(a), 9(a), or 10(b) may apply to the financing, transporting, or other servicing of exports and the participation therein by any person.

TRANSFER OF FUNCTIONS

SEC. 18. (a) TRANSFERS TO DIRECTOR.—In addition to authorities and responsibilities elsewhere provided for in this Act, there are transferred to the Office of Strategic Trade the following functions and authorities:

(1) those of the Offices of East-West Trade and Munitions Control of the Department of State with respect to the munitions list pursuant to the Arms Export Control Act; and

(2) such other functions and authorities, not specifically or otherwise vested or delegated by statute, as the Director, in consultation with the Director of the

Office of Management and Budget, determine to be appropriate.

(b) INCIDENTAL TRANSFERS.—The Director of the Office of Management and Budget, in consultation with the Director, is authorized and directed to make such determinations as may be necessary with regard to the transfer of functions which relate to or are utilized by an agency, commission or other body, or component thereof affected by this Act, to make such additional incidental dispositions of personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with the functions transferred by this Act, as he may deem necessary to accomplish the purposes of this Act.

EFFECT ON OTHER ACTS

SEC. 19. (a) IN GENERAL.—Nothing contained in this Act shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodity.

(b) COORDINATION OF CONTROLS.—The authority granted to the President under this Act shall be exercised in such manner as to achieve effective coordination with the authority exercised under section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(c) CIVIL AIRCRAFT EQUIPMENT.—Notwithstanding any other provision of law, any product (1) which is standard equipment, certified by the Federal Aviation Administration, in civil aircraft and is an integral part of such aircraft, and (2) which is to be exported to a country other than a controlled country, shall be subject to export controls exclusively under this Act. Any such product shall not be subject to controls under section 38(b)(2) of the Arms Export Control Act. For purposes of this subsection, the term "controlled country" means any country described in section 620(f) of the Foreign Assistance Act of 1961.

(d) NONPROLIFERATION CONTROLS.—(1) Nothing in section 7 or 8 of this Act shall be construed to supersede the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978.

(2) With respect to any export license application which, under the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978, is referred to the Subgroup on Nuclear Export Coordination or other interagency group, the provisions of section 12 of this Act shall apply with respect to such license application only to the extent that they are consistent with such published procedures, except that if the processing of any such application under such procedures is not completed within one hundred and eighty days after the receipt of the applica-

tion by the Director, the applicant shall have the rights of appeal and court action provided in section 12(j) of this Act.

(e) TERMINATION OF OTHER AUTHORITY.—On October 1, 1979, the Mutual Defense Assistance Control Act of 1951 (22 U.S.C. 1611-1613d), is superseded.

AUTHORIZATION OF APPROPRIATIONS

SEC. 20. (a) REQUIREMENT OF AUTHORIZING LEGISLATION.—Notwithstanding any other provision of law, no appropriation shall be made under any law to the Department of Commerce for expenses to carry out the purposes of this Act unless previously and specifically authorized by law.

(b) AUTHORIZATION.—There are authorized to be appropriated to carry out the purposes of this Act—

(1) $ for each of the fiscal years 1984 through 1987; and

(2) such additional amounts, for each such fiscal year, as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.

EFFECTIVE DATE

SEC. 21. This Act shall take effect upon the expiration of the Export Administration Act of 1979.

TERMINATION DATE

SEC. 22. The authority granted by this Act terminates on September 30, 1987, or upon any prior date which the President by proclamation may designate.

SAVINGS PROVISIONS

SEC. 23. (a) IN GENERAL.—All delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action which have been made, issued, conducted, or allowed to become effective under the Export Control Act of 1949, the Export Administration Act of 1969, or the Export Administration Act of 1979 and which are in effect at the time this Act takes effect shall continue in effect according to their terms until modified, superseded, set aside, or revoked under this Act.

(b) ADMINISTRATIVE PROCEEDINGS.—This Act shall not apply to any administrative proceedings commenced or any application for a license made, under the Export Administration Act of 1979, which is pending at the time this Act takes effect.

TECHNICAL AMENDMENTS

SEC. 24. (a) Section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)) is amended by striking out "section 11 of the Export Administration Act of 1979, and by subsections (a) and (c) of section 12 of such Act" and inserting in lieu thereof "section 13 of the Office of Strategic Trade Act of 1983 and by subsections (a) and (c) of section 14 of such Act".

(b)(1) Section 103(c) of the Energy Policy and Conservation Act (42 U.S.C. 6212(c)) is amended by striking out "Export Administration Act of 1979" and inserting in lieu thereof "Office of Strategic Trade Act of 1983".

(2) Section 254(e)(3) of such Act (42 U.S.C. 6274(e)(3)) is amended by striking out "section 12 of the Export Administration Act of 1979" and inserting in lieu thereof "section 14 of the Office of Strategic Trade Act of 1983".

(c) Section 993(c)(2)(D) of the Internal Revenue Code of 1954 (26 U.S.C. 993(c)(2)(D)) is amended—

(1) by striking out "7(a) of the Export Administration Act of 1979" and inserting in lieu thereof "9(a) of the Office of Strategic Trade Act of 1983"; and

(2) by striking out "(A)" and inserting in lieu thereof "(C)".

(d) Section 5313 of title 5, United States Code, is amended by adding at the end thereof the following item:

"Director of Strategic Trade.".

(e) Section 5315 of such title is amended by adding at the end thereof the following:

"Assistant Directors, Office of Strategic Trade (4).".

AMENDMENTS TO THE NATIONAL SECURITY ACT OF 1947

SEC. 25. The fourth paragraph of section 101(a) of the National Security Act of 1947 (50 U.S.C. 402(a)) is amended—

(1) by redesignating clauses (5), (6), and (7) as clauses (6), (7), and (8), respectively; and

(2) by inserting after clause (4) the following new clause:

"(5) the Director of Strategic Trade;".

II

98TH CONGRESS
1ST SESSION

S. 979

To amend and reauthorize the Export Administration Act of 1979.

IN THE SENATE OF THE UNITED STATES

APRIL 6 (legislative day, APRIL 5), 1983

Mr. HEINZ (by request) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

---

A BILL

To amend and reauthorize the Export Administration Act of 1979.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

AMENDMENTS TO FINDINGS

SECTION 1. Section 2 of Public Law 96–72 is amended as follows:

(1) by striking in paragraph (3), "which would strengthen the Nation's economy.", and substituting in lieu thereof, "consistent with the economic security, and foreign policy objectives of the United States.";

(2) by striking paragraph (5), redesignating paragraph (4) as paragraph (5), and redesignating para-

graphs (7) through (9) as paragraphs (8) through (10), respectively; and

(3) by inserting after paragraph (3):

"(4) Availability from foreign sources of goods and technology that are controlled by the United States to protect its national security can adversely affect that security."; and

(4) by inserting after paragraph (6),

"(7) The transfer of critical commodities and technical data has made a significant contribution to the military potential of other countries that has been detrimental to the security of the United States, its allies, and other friendly nations, and has necessitated increases in the defense budgets of these nations.".

AMENDMENTS TO DECLARATION OF POLICY

SEC. 2. Section 3 of the Public Law 96-72 is amended as follows:

(1) by striking in paragraph (3) the word "and";

(2) by deleting in paragraph (3) the period which ends the sentence, and adding in lieu thereof, ", and (C) to negotiate bilaterally or multilaterally to eliminate, whenever possible, the availability of goods and technology from foreign sources that are present in sufficient quantity and are of comparable quality with those controlled or proposed to be controlled for na-

tional security purposes in the United States so as to render the controls ineffective in achieving their purposes.";

(3) by redesignating paragraphs (10) and (11) as paragraphs (11) and (12), respectively, and inserting after paragraph (9);

"(10) It is the policy of the United States to seek arrangements with those countries not participating in the group known as the Coordinating Committee to restrict the export of United States goods and technology that are controlled for national security reasons."; and

(4) by adding new paragraphs (13) and (14) as follows:

"(13) It is the policy of the United States when imposing new foreign policy controls to minimize the impact of preexisting contracts and on business activities in allied or other friendly countries to the extent consistent with the underlying purpose of the controls.

"(14) It is the policy of the United States to develop licensing mechanisms to minimize the burdens placed on United States export trade, particularly United States export trade with member countries of COCOM, Australia, and New Zealand.".

AMENDMENTS TO GENERAL PROVISIONS

SEC. 3. Section 4 of Public Law 96-72 is amended as follows:

(1) by deleting in paragraph (2) in subsection (a). "A qualified general license," and substituting in lieu thereof "Licenses";

(2) by modifying subsection (b) to read as follows:

"(b) CONTROL LIST.—The Secretary shall establish and maintain a list (hereinafter in this Act referred to as the 'Control List') indicating license requirements for exports to various countries of destination subject to control under this Act."; and

(3) by deleting in subsection (c) "significant" and substituting in lieu thereof "sufficient", and inserting after "to those produced in the United States" the words "so as to render the controls ineffective in achieving their purposes".

AMENDMENTS TO NATIONAL SECURITY CONTROLS

SEC. 4. Section 5 of Public Law 96-72 is amended as follows:

(1) in paragraph (1) of subsection (a), by inserting after the first sentence, "This authority includes the power to prohibit or curtail the transfer of goods or technologies within the United States to embassies and

affiliates of countries to which exports of these goods or technologies are controlled.";

(2) by deleting subparagraph (B) in paragraph (2) of subsection (a) and by striking "(A)" before the first sentence of paragraph (2) of subsection (a);

(3) by deleting the word "commodity" in the first sentence of paragraph (1) in section (c), and by deleting the second sentence in that paragraph and substituting in lieu thereof: "The Secretary shall clearly identify on the control list which goods and technical data and countries or destinations are subject to which types of controls under this section.";

(4) by modifying the heading of subsection (d) to read "Militarily Critical Goods and Technologies.";

(5) by modifying subparagraph (B) of paragraph (2) in subsection (d) to read "keystone materials and manufacturing, inspection, and test equipment, and";

(6) by deleting the word "commodity" in paragraph (5) of subsection (d);

(7) by redesignating paragraph (6) of subsection (d) as paragraph (7), and inserting after paragraph (5):

"(6) The establishment of adequate export controls for militarily critical technology and keystone equipment shall be accompanied by suitable reductions in the controls over the products of that technology and equipment.";

(8) by deleting subsection (e) in its entirety, and redesignating subsections (f) through (l) as (e) through (k), respectively;

(9) in paragraph (1) of subsection (e), as redesignated, by striking "sufficient quality" and substituting in lieu thereof "comparable quality";

(10) in paragraph (2) of subsection (e), as redesignated, by striking "sufficient quality" and substituting in lieu thereof "comparable quality";

(11) by redesignating paragraphs (3) through (6) in subsection (e), as redesignated, as (4) through (7), respectively, and adding a new paragraph (3) as follows:

"(3) The mere capacity of a foreign country to produce items in sufficient quantity and of comparable quality with those controlled by the United States, so as to render the controls ineffective in achieving their purposes, does not, in and of itself, constitute foreign availability.";

(12) by striking in the first sentence of paragraph (5) of subsection (e), as redesignated, "take steps to initiate" and substituting in lieu thereof "actively pursue";

(13) in section (f), as redesignated—

(a) by striking "and qualified general licenses" in the first sentence,

(b) by inserting at the end of the first sentence, "The regulations issued by the Secretary shall establish as one criterion for the removal of goods or technology the anticipated needs of the military of countries to which exports are controlled for national security purposes.", and

(c) by deleting from the existing second sentence "by the latest such increase" and substituting in lieu thereof "by the regulations";

(14) by striking in paragraph (6) of subsection (g), as redesignated, "(f)(1)", and substituting in lieu thereof "(e)(1)";

(15) by striking in paragraph (1) of subsection (h), as redesignated, "agreement of the Committee," where it appears the second time and substituting in lieu thereof "list,";

(16) by striking in paragraph (2) of subsection (h), as redesignated, "discussing export control policy issues and issuing policy guidance" and substituting in lieu thereof "providing guidance on export control policy issues";

(17) by striking in paragraph (3) of subsection (h), as redesignated, "reduce" and substituting in lieu thereof "modify";

(18) by inserting in paragraph (4) of subsection (h), as redesignated, after "effective procedures for" the words "administering and";

(19) by inserting after paragraph (4) of subsection (h), as redesignated, paragraphs (5) and (6) as follows:

"(5) Agreement to improve the International Control List and minimize the approval of exceptions to that list, strengthen enforcement and cooperation in enforcement efforts, provide sufficient funding for COCOM, and improve the structure and function of the COCOM Secretariat by upgrading professional staff, translation services, data base maintenance, communications, and facilities.

"(6) Agreement to strengthen COCOM so that it functions effectively in controlling export trade in a manner that better protects the national security of each participant to the mutual benefit of all.";

(20) by inserting in subsection (j), as redesignated, after "other countries" the words ", including those countries not participating in the group known as the Coordinating Committee,", by striking "policy" and substituting in lieu thereof "policies", and by striking "section 3(9)" and inserting in lieu thereof "sections 3(9) and 3(10)"; and

(21) by inserting after "Munitions List" in paragraph (2) of subsection (k), as redesignated, "or the military use of any item on the COCOM List".

AMENDMENTS TO FOREIGN POLICY CONTROLS

SEC. 5. Section 6 of Public Law 96–72 is amended as follows:

(1) by deleting in subsection (c) "with such affected United States industries as the Secretary considers appropriate," and substituting in lieu thereof "as appropriate with affected United States industries";

(2) by inserting after the first sentence in subsection (f) "This section also does not authorize export controls on donations of articles, such as food and clothing, intended to be used to relieve human suffering, except to the extent that the President determines that such donations are in response to coercion against the proposed recipient or donor.";

(3) by striking in the first sentence of subsection (k) the word "commodity";

(4) by striking the second sentence of subsection (k) and substituting in lieu thereof "The Secretary shall clearly identify on the control list which goods and technical data and countries or destinations are subject to which types of controls under this section."; and

(5) by adding at the end of section 6 a new subsection as follows:

"(l) SANCTITY OF CONTRACT.—The President shall not prohibit or curtail the export of any good or technology that is controlled under this section if such goods or technology is to be exported pursuant to a sales contract (1) entered into before the President places the export under control, and (2) the terms of which require delivery of the export within 270 days after the control is imposed, except that the President may prohibit or curtail such export if he determines that not prohibiting or curtailing such export would prove detrimental to the overriding national interests of the United States.".

AMENDMENTS TO SHORT SUPPLY CONTROLS

SEC. 6. Section 7 of Public Law 96–72 is amended by deleting in their entirety subsections (c), (e), (f), (h), (i), and (j), by deleting paragraphs (1) and (2) of subsection (d), by redesignating paragraph (3) of subsection (d) as subsection (c), and by redesignating subsection (g) as subsection (d).

AMENDMENTS TO PROCEDURES FOR PROCESSING EXPORT LICENSE APPLICATIONS

SEC. 7. Section 10 of Public Law 96–72 is amended as follows:

(1) by striking in the first sentence of subsection (b) "10" and substituting in lieu thereof "14";

(2) by striking in subsection (c) "90" and substituting in lieu thereof "60"; and

(3) by inserting in paragraph (3) in subsection (f) after "the policies set forth in section 3 of the Act which would be furthered by denial," and before "and, to the extent consistent with the national security" the following: "what, if any, modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with controls imposed under this Act,".

AMENDMENTS TO VIOLATIONS PROVISIONS

SEC. 8. Section 11 of Public Law 96-72 is amended as follows:

(1) by inserting in paragraph (a) after "violates" the following "or conspires to or attempts to violate";

(2) by deleting in paragraph (1) in subsection (b) "exports anything contrary to" and substituting in lieu thereof "violates or conspires to or attempts to violate";

(3) by inserting in paragraph (1) in subsection (b) after "benefit of" the following, "or that the destination or intended destination of the goods or technology involved is", and by striking "restricted" and substituting in lieu thereof "controlled";

(4) by adding at the end of paragraph (1) in subsection (b) the sentence "For purposes of this subsection, a country to which exports are controlled for national security purposes is one identified pursuant to the determinations made in accordance with subsection 5(b) of this Act,";

(5) by inserting after paragraph (2) in subsection (b) the following paragraphs:

"(3) Whoever possesses any goods or technology with the intent to export them contrary to this Act or any regulation, order, or license issued thereunder shall be subject to the penalties as provided in subsection 11(a), except for a national security violation which would be subject to the penalties as provided in subsection 11(b)(1).

"(4) Nothing in this subsection or subsection (a) shall limit the power of the Secretary to define by regulations violations under this Act.";

(6) by inserting after paragraph (2) in subsection (c) the following new paragraph:

"(3) Whoever violates any national security control imposed under section 5 of this Act, or any regulation, order, or license related thereto, may be subject to such controls on the importing of its goods or technology into the United States or its territories and possessions as the President may prescribe.";

(7) by inserting in subsection (e) after "subsection (c)" the words "or any amounts realized from the forfeiture of property interest or proceeds forfeited pursuant to subsection (f)", and by inserting after "refund any such penalty" the words "imposed pursuant to subsection (c)";

(8) by redesignating subsections (f) and (g) as subsections (g) and (i), respectively;

(9) by inserting after subsection (e):

"(f) FORFEITURE OF PROPERTY INTEREST AND PROCEEDS.—(1) Whoever has been convicted of a national security export control violation under subsection (a) or (b) shall, in addition to any other penalty, forfeit to the United States:

"(A) any of his interest in, security of, claim against, or property or contractural rights of any kind in the goods or technology that were the subject of the violation;

"(B) any of his interest in, security of, claim against, or property or contractural rights of any kind in property that was used to facilitate the commission of the violation; and

"(C) any of his property constituting, or derived from, any proceeds obtained directly or indirectly as a result of such violations.

"(2) The procedures in any criminal forfeiture under this section, and the duties and authority of the courts of the

United States and the Attorney General with respect to any criminal forfeiture action under this section or with respect to any property that may be subject to forfeiture under this section, are to be governed by the provisions of section 1963 of title 18, United States Code.";

(10) by inserting after subsection (g), as redesignated, the following paragraph:

"(h) PRIOR CONVICTIONS.—No person convicted of espionage under title 18, United States Code, section 793, 794, or 798, title 50, United States Code, section 783(b), or the Arms Export Control Act, title 22, United States Code, section 2778, shall be eligible, at the discretion of the Secretary, to apply for, or use, any export license during a period of up to 10 years from the date of conviction. Any outstanding export licenses in which such a person has an interest may be revoked, at the discretion of the Secretary, at the time of conviction."; and

(11) by striking "or" after "(d)," in the introductory language that precedes paragraph (1) in subsection (i), as redesignated, and inserting after "(f)", ", (g) or (h)".

AMENDMENTS TO ENFORCEMENT PROVISIONS

SEC. 9. Section 12 of Public Law 96-72 is amended as follows:

(1) by striking in subsection (e) "section 5(h)" and substituting in lieu thereof "section 5(g)"; and

(2) by striking in subsection (e) "commodity".

AMENDMENTS TO ANNUAL REPORT

SEC. 10. Section 14 of Public Law 96-72 is amended as follows:

(1) in subsection (a)—

(a) by deleting paragraph (6) in its entirety, and by redesignating paragraphs (7) through (20) as paragraphs (6) through (19), respectively;

(b) by striking "section 5(f)" in paragraph (6), as redesignated, and substituting in lieu thereof "section 5(e)";

(c) by striking "section 5(f)(5)" in paragraph (7), as redesignated, and substituting in lieu thereof "section 5(e)(6)";

(d) by striking "section 5(g)" in paragraph (8), as redesignated, and substituting in lieu thereof "section 5(f)";

(e) by striking "section 5(h)" in paragraph (9), as redesignated, and substituting in lieu thereof "section 5(g)";

(f) by striking "section 4(e)" in paragraph 15, as redesignated, and substituting in lieu thereof "section 4(d)"; and

(2) by striking "section 5(i)" in subsection (c) and substituting in lieu thereof "section 5(h)".

AMENDMENTS TO EFFECT ON OTHER ACTS

SEC. 11. Section 17 of Public Law 96-72 is amended—

(1) by striking the last sentence in subsection (c) and substituting in lieu thereof: "For purposes of this subsection, the term 'controlled country' means any country to which exports are controlled under section 5 of this Act because of a finding that a significant contribution to the military potential of that country would prove detrimental to the national security of the United States,"; and

(2) by deleting in paragraph (2) of subsection (d), "that they are consistent with such published procedures, except".

AMENDMENTS TO AUTHORIZATION OF APPROPRIATIONS

SEC. 12. Section 2417 of title 50, Appendix, United States Code, is amended by striking paragraph (1) of section (b) and substituting in lieu thereof:

"(1) such sums as may be necessary for each of the fiscal years 1984, 1985, 1986, and 1987, and".

AMENDMENTS TO TERMINATION DATE

SEC. 13. Section 20 of Public Law 96-72 is amended by deleting "1983" and substituting "1987".

Senator HEINZ. Senator Lautenberg?

Senator LAUTENBERG. Just very briefly, Mr. Chairman, I am pleased that you've called this hearing. I look forward to participating. Our mission, I am sure we're agreed, is to faciliate U.S. trade overseas, keeping in mind of course the security concerns that are vital, and I'm very interested to see how we in the Congress can facilitate this.

Thank you.

Senator HEINZ. Very well; I'm going to ask Mr. Olmer to start off. I would just remark for the record that Mr. Perle testified in closed session to the committee. He testified basically as to the extent that the Soviet Union and other Eastern bloc countries get from the West, including the United States, by a variety of means, a number of critical elements of technology, including the means of production of that technology.

The methodology by which they acquire it includes not only our open society—you can pick up magazines, some published by the Government, that give you quit a bit of very valuable information. A second tier is in legal trade, and third, they're quite successful at espionage operations unfortunately. All three of these combined have in this Senator's judgment given the Soviets an opportunity to acquire some very sophisticated technology and the means of production thereof.

Having summarized his testimony, he will be free later to answer questions, I understand.

Mr. Perle?

STATEMENT OF RICHARD D. PERLE, ASSISTANT SECRETARY FOR INTERNATIONAL SECURITY POLICY, DEPARTMENT OF DEFENSE; LIONEL OLMER, UNDER SECRETARY FOR INTERNATIONAL TRADE, DEPARTMENT OF COMMERCE; AND WILLIAM SCHNEIDER, UNDER SECRETARY FOR SECURITY ASSISTANCE, DEPARTMENT OF LABOR

Mr. PERLE. Mr. Chairman, members of the committee, I appreciate the oportunity to appear before the subcommittee today to discuss the role of the Department of Defense in implementing national security controls under the Export Administration Act.

As the subcommittee is aware, the problem of the transfer of significant military technology to the Soviet Union and Warsaw Pact is serious indeed.

Over the past 15 years, the Soviets have acquired from the West technology which has significantly contributed to their military buildup and improved the quality of their deployed hardware. In certain applications, the Soviet bloc has narrowed its technology gap with the West from 10 years to within 2 years.

Western microelectronics and computer technology are two specific cases where the Soviets 10 years ago had no industry of their own. Yet, aware that NATO forces depend extensively on microelectronics and computers for everything from smart weapns to command and control, the Soviets sought and continue to seek to import the key technical and industrial elements to give them a similar capability.

Today, we are seeing the result of Soviet acquisition efforts. Soviet strategic and conventional weapons are using Western microelectronics and Western computer designs to enhance their performance.

To help counter this threat, the Department of Defense, in cooperation with other Federal agencies, over the past 2 years has undertaken major efforts at home and internationally to curb what until recently had been a virtual hemorrhage of strategic technology to the Soviet bloc countries.

As the subcommittee is aware, the problem of Soviet bloc use of strategic technology is complex and difficult. But, it is well within our reach to substantially limit Soviet penetration of our industrial system if we have the will to implement a comprehensive program, and we work hard to coordinate our own program with our allies and friends overseas.

The export control program of this administration, therefore, has stressed three main elements:

First, we have sought to strengthen our domestic program by improving our efficiency, building up our analytical and information skills and tightening enforcement.

Second, we have sought to improve the international technology control program which is centered in the international coordinating committee, or Cocom, which includes the NATO nations, less Iceland and Spain but including Japan, by strengthening controls over key technologies and recommending institutional changes to promote enforcement.

Third, we have acted to stem the hemorrhage of technology through conduits outside the Cocom system—namely through neutral and nonalined nations, which are reexport points for moving Western high technoogy equipment into the Soviet bloc.

At Cocom, we are seeking to create a new spirit and commitment from the organization's membership and provide policy direction and sensitivity to the threat. In addition, we are working to strengthen the organization itself, and to make available to it the professional staff and infrastructure required to function effectively. In the end, I believe we will be successful in strengthening the organization. Our partners more and more understand and share our commitment and our sentiment to improve Cocom overall.

One of our goals is to improve the efficiency, clarity, and predictability of our own domestic control program. This should be particularly helpful to business both here and abroad, as it will mean greater certainty as to what can and cannot be exported, faster turnaround on actual applications for export, and—most importantly of all—improved voluntary support for the control program because I believe a consensus will emerge on what is important, and why.

It should be clear to all that the export control program requires voluntarism by business and industry if it is going to be successful in the end. A clear corollary is that the Government needs to improve its efficiency and level of responsiveness to the legitimate trade interests of business and industry as much as possible. Our program certainly is moving in this direction. In this connection, there is an ongoing interagency effort to revise the Export Administration Act, which is up for renewal. Defense, like the other agencies involved in the export control process, are considering various proposals which recently have been introduced. While we cannot comment in any detail on various proposals to the act, I would like to respond briefly to another question of the subcommittee. That has to do with provisions of the existing act regarding the military critical technologies list, or MCTL.

In 1982, a major effort was completed in incorporating the MCTL into U.S. proposals prepared for the current Cocom list review effort. The MCTL program provided over 300 technical groups of the Cocom list review. This effort was an attempt to place on the multilateral Cocom list those Keystone equipment and materials on the MCTL not presently covered on the control list.

There is still a need to include the MCTL "arrays of know-how" into the U.S. export control regulations. On September 10, 1982, defense provided to the Department of Commerce and industry a first revision of the technical data regulation procedures (section 379 of the export administration regulations). We expect many changes before an agreed-on policy is achieved.

Each of the three component parts of our program involves substantial preparation and professional staff support. When we began the effort at the onset of this administration, the resources were insufficient given the immensity of the problem. For example, our enforcement effort was weak. Few inspectors were available to check outbound cargo from the harbors and airfields of the United States.

Project Exodus of the U.S. Customs Service has begun to reverse the problem of outbound inspection. To give Exodus a headstart this year, the Defense Department made available on a one-time basis $25 million. This action was approved by Congress. In its first years of operation, Exodus has interdicted 1,100 shipments valued at more than $71 million. Some involve extremely sensitive equipment that would have gone to the Warsaw Pact.

I trust this brief statement will give the subcommittee an appreciation of the scope of our effort. Separately, I am providing replies to the specific questions you have asked.

In summary, let me say that I believe that we are now moving in an effective manner to stop the loss of advanced technology to the Soviet Union and Warsaw Pact. In the near term this will contribute to greater consistency and predictability in the administrative process and improvement of the underlying consensus required for the program to work well.

Over time, the impact of the program will be to limit the Soviet ability to match and countermeasure our defense effort. This will lead to the saving of billions of dollars in future defense costs.

Senator HEINZ. And now, Mr. Olmer?

Mr. OLMER. Thank you very much, Mr. Chairman. I am pleased to appear today. I can assert unequivocally that I do support the objectives of you and Senator Garn and others of your colleagues, but the gap between us in the understanding of the problem and the ways to fix it are indeed enormous.

I think we have many differences in perception, and I believe in reality as well. I look forward to the opportunity to try to explain what I believe to be the nature of the effort to control technology, and why the Commerce Department does it better now than anyone else could possibly do it, and perhaps to give you and your colleagues some insight into the nature of what is happening in international trade that affects and limits our ability to have an impact on it, of the character we would all want to have.

I have a statement for the record which answers many of the questions that were submitted to me. I would like to briefly summarize that statement now.

I would like to say by way of opening that the administration's position on renewal of the Export Administration Act, we hope and believe, will be available within the next 10 days, and I believe it will to a large extent accommodate not only the objectives but the ways in which those objectives are to be implemented and achieved.

In that regard I think both you and Senator Garn have a number of very solid points to be made. They are in reference to the past performance of the Commerce Department, and I think we will be pleased to adopt many of them.

As has been said, the Department of Commerce under the authority of the Export Administration Act of 1979 and in consultation with the Department of Defense exercises control over what are called dual-use products and technology. You've asked in particular that I describe the way in which the control list is developed and the way in which decontrol occurs.

Primarily, the process involves the Cocom list review which occurs every 3 years and last for about 1 year. A unanimous agreement has to be reached in order to decontrol a product or to add that product to the list.

If there is no such unanimity, an effort is made to resolve differences at varying levels of seniority in the administration, and it would even possibly be escalated to the Cabinet level before a decision was reached.

The administration's goal in administering national security controls is to do that which is necessary to protect the national security and at the same time do it with minimum impairments to our legitimate commercial trade interests.

We have actively worked to develop an appropriate balance between those two aims and those are two aims which are identified in the Export Administration Act of 1979 and aims which I hope will be reflected in the renewal of that act.

Clearly, we've not yet achieved all that we should or all that we need to accomplish for the intent of the EAA to be fully realized. A lot more needs to be done, but we are working hard to achieve those ends.

DIFFERENCES OF OPINION IN SECURITY CONTROLS

I'd like to say that despite the fact that there are differences on many occasions between the Commerce Department and other agencies of government in national security controls in the administration, principally with the Defense Department, I hope people realize that it is not a zero-sum game. It is not a question of if the Defense Department wins, Commerce loses.

The process of critical review sometimes is adversarial and oftentimes it can even get antagonistic, but it's a very useful process and it's one which I don't think should be lightly altered.

You have asked that I talk a little bit about the Militarily Critical Technologies List and the provisions of law regarding it. The Export Administration Act of 1979 has very little to say about the MCTL, but it does say two important things. No 1 it says that "the Department of Defense shall establish the MCTL and that the Department of Commerce shall implement it."

It hasn't yet been done. Last November Under Secretary of Defense Richard DeLauer submitted an initial crack at what an MCTL might look like. We are presently in the process of reviewing it.

In its present form it is not a formal proposal by the Department of Defense. Even if it were, it wouldn't be possible to implement it.

You see before me three volumes, the bottom volume of which is a sample of the MCTL dealing with one critical area of technology. It represents one-seventeenth of the commentary which the DOD has developed on that particular technology area, and it would not under any circumstance be in the form for consideration by the business community so that it could deal with it with any sense of certainty or predictability. We are working on it to reduce both the complexity and the magnitude that it now represents.

Now the lion's share of the effort to refine this pile has to be done by those in the business community. Those in the business community who—believe it or not, there are some who sometimes seem to choose not to believe it—have our national security interests very much at stake and at the top of their priority as anyone else.

In the absence of their expertise we couldn't deal with that body of material. The Government doesn't have the expertise. We value their contributions. If we don't maintain a credibility with them, we will lose it, and I think we have worked very hard to achieve it.

We have had one technical advisory committee to deal with the MCTL thus far, and that's been from the semi-conductor industry. There are a number of others who have been briefed on the concept and who are aware of it. I think they're very suspicious of it, but we've identified various areas where we could get together and work. They include the computer systems, computer peripherals, electronic instrumentation, numerically controlled machine tools and telecommunications.

By way of illustration I'd like to point out that these three pieces of semiconductor product represent a computer: one is a microprocessor and the other two smaller devices are memory chips.

It so happens that the American company that manufactured these products manufactures everything it does to military specifications. They're completely interchangeable, whether they're being used for a game or for a missile guidance system.

Now, most of what that company and most other American and European and Japanese and Brazilian and Southeast Asian companies produce is not produced for the U.S. military. Indeed, the leading edge of technology has shifted from the Defense Department to the commercial sector, and in fact the latest state of the art in microcircuitry is not employed almost anywhere throughout the Defense establishment.

If you were to add one more microprocessor and roughly a handful of these memory chips, you would have a computer with the capacity of an IBM computer of the 1970 vintage, and I would dare say that in this shoebox of semi-conductor components, if they are analyzed, you would find the equivalent of perhaps half the computing capability available in the entire United States in 1970.

Technology is moving far faster than it can be introduced by the military into weapons systems, and in fact every industrialized country in the world—and many that aren't industrialized—are now producing these systems.

There are many areas of that technology in which the United States is second best. There are most areas that I believe we're still predominant. It is also a fact that in 1982, over 50 billion of these devices were produced.

I have a little trouble accommodating those large numbers in the Commerce Department. There are other parts of government that don't have such difficulty, but 50 billion I think by any standard is a large number.

Most of them, in fact over half, were produced by the Japanese. The Japanese produced more than the total of the European community and the United States combined.

So the nature of our problem has shifted. It's shifted from end products—from commodities, to that of the ability to manufacture these devices, and what we have to do is a far better job of convincing our allies in Cocom and so-called neutrals or nonalined countries to agree with us that it makes little sense to accede to the transfer, either legally or through inattention, illegally, to potential adversaries.

It's not going to be an easy process and it doesn't simply represent jobs in the United States, it represents jobs all over the world.

Half the value of U.S. semiconductors are produced outside of the United States today. The jobs are moving offshore faster than they have before, and I don't see any reversal of that trend.

There's little disagreement anywhere about the need to streamline these controls. The problem is coming to grips with the tradeoffs that have to be made, and who's going to make those tradeoffs? They have to be made with criteria in mind, the first one being that of maintaining our national security to the best of our ability, and that is not always clear.

To assuring that we maintain sufficient domestic economic strength to compete now and into the future, we've received a number of proposals in the Department of Commerce from a variety of sources to modify our export controls.

One of them came, again, from Under Secretary DeLauer, separate from the list that I just talked about. He has a proposal that is somewhat similar to the comprehensive operations license concept put forth by the private sector.

I happen to believe there's an enormous amount of merit to it. It represents, both on his part and on the private sector's part in their development of the CCL, a very creative and, I think, enlightened way of looking at the problem in its current form.

This is not 1970 and it sure as heck is not 1960. We're in the process of aggregating all of the private sector's comments and we will be issuing proposed regulations to simplify existing procedures as well as to further develop the CCL and other prospective simplification procedures as soon as possible.

REDUCING EXPORT LICENSING REQUIREMENTS

The President's Export Council has passed a resolution for reducing the validated export licensing requirements on exports to Cocom; it has also submitted a variety of other things.

I would like to underscore the value that we have received thus far from the President's Export Council Subcommittee. As has been said many times, that the only way we are ever going to achieve the objectives we seek is to convince those that have the ability to produce high technology goods that they must join with us in a common effort to restrain them. Until that happens, we are not likely to achieve the ends that we seek.

Now, that presents us with a dilemma. On the one hand, of the 85,000 licenses which we receive, more than I would say half—say half—are to Cocom countries. Now, should we just eliminate license requirements to Cocom? I can't certify to that now, though I would very much like to. It is not just a question of foreign availability, which I will get to in a minute. It is largely a question of being satisfied that the assurances we receive from those Cocom countries mean what it says: that the equipment will not be reexported without prior permission, that it will not be diverted through the hiring of questionable characters and the like.

One of the interesting things about the comprehensive operations license procedure is that the business community will take onto its own shoulders the responsibility of providing the government those kinds of assurances through its own plant security procedures.

I might add that my own familiarity with sectors in the electronics industry indicates to me that they are very serious about protecting their own business secrets. Because of widespread foreign availability, we have recognized the difficulty of effective enforcement without that multilateral cooperation.

Senator, it has been a matter of some debate as to whether our negotiating strategy, our negotiating position, is enhanced when we demonstrate the seriousness of our purpose by not unilaterally decontrolling, or whether it is a feckless exercise to retain controls while we seek to achieve agreement throughout Cocom. We have, together with the Defense Department, sought in several instances in the last year to work bilateral agreements.

I completely agree that that effort needs to be expedited. To a large extent, of the 80,000 to 85,000 license applications a year ago, over 60,000 were processed in less than 30 days, and for many of the companies that are doing that, it is a paperwork burden, and I would like to see it eliminated. But it is not an egregious paperwork burden.

Only 6,600 of that 85,000 involved national security cases for exports to proscribed destinations. Because of an arrangement with the Department of Defense, the Department of Commerce was required to submit, for Defense review, about 1,800 of those 6,600 cases, and of that 1,800 we reached agreement within a relatively short period of time with DOD on all but 200. For those 200, we required more serious interagency discussion, and we whacked that down to 20. Finally, of the 20, the assistant secretaries were able to resolve only a couple, which had to be escalated to the Cabinet level.

I guess my point is that it is not a zero sum gain. We are each actively involved in the process of providing a check and the balance, and I think we do it. We are committed to identify for decontrol equipment that incorporate microprocessors which are presently controlled under a commodity control list entry known as 4529B; 4529B is one of 215 different categories of products. I have been unable to ascertain the total number of products under all of those entry list categories.

I think you know from my testimony in areas dealing with countervailing duty that I have been able to get at numbers that haven't been gotten at before, Senator. We can't figure it out because the list is too large. In our judgment, there are nearly 10,000 products which are now controlled unilaterally by the United States, no agreement anywhere.

We are working on an effort to eliminate or at least reduce that number of unilaterally controlled items, and we do believe that in the particular area I mentioned, scientific instruments, there is no reason for its being the way it is. We submitted a proposal to the Defense Department in early December. Defense is now reviewing that proposal.

I might say that the kind of instruments we are talking about are those which, in our judgment, do not have a military equivalent. They are blood analyzers, urinalysis machines, a number of other things which contain within them one of these microprocessors. For that reason alone, they are required to be controlled. Our allies—and obviously, the neutrals; and obviously those that don't want to be called either, but are not yet adversaries—don't subscribe to our control definitions.

FOREIGN AVAILABILITY

In the area of foreign availability, the last observation I would like to make—we have made an effort to develop a capability to assess foreign availability. Up to now, it has been determined on the basis of information available either within the U.S. Government or from the applicant on similar foreign commodities. The quote, if that's what it was, from the Secretary's annual report, that no decontrol has been made on the basis of foreign availability, may be accurate, but it's misleading, misleading because we have undertaken to advance foreign availability as a justification in the Cocom list review process, and indeed, we have eliminated one entire category, and we have eliminated 30 individual products, for reasons of foreign availability.

An additional, I would say, about 100 products which we believe ought to be decontrolled because of foreign availability have so far not met with the Defense Department's agreement. Thus we are at loggerheads, but we are making progress.

The Commerce Department has hired a program manager, full time, to develop a program, and we have contracted out with a reputable consulting firm to help us in developing this program. We have spent some money available within the Department, and I know in the next year we will be spending a great deal more.

I feel that I should say that with respect to foreign availability I nonetheless believe that the Government requires a period of time in which it should make an effort to eliminate that source of that foreign available product, and as I mentioned earlier, we have done that in a couple of instances.

Mr. Perle mentioned some particular instances in the closed session, and we want to work with him to expedite—and the State Department, I might add—expedite a number of negotiations we initiated in order to achieve that purpose.

Mr. Chairman, I guess that concludes the summary of my statement, and I appreciate your indulgence for the length of time it's taken me to go through it. I believe we are making progress. I believe that to a large extent we have an undertaking of such enormous proportions that progress is sometimes difficult to measure.

In my view, there is a lot of confidence that has to be put in the long-suffering business community, which has not only put up with it for such a long time, but has helped us to make the progress we have made to date. With your help, not only of your colleagues, but with the State Department and Defense Department, next year will see a further improvement in our system. Thank you.

[The complete statement follows:]

PREPARED STATEMENT OF LIONEL H. OLMER
UNDER SECRETARY
FOR INTERNATIONAL TRADE ADMINISTRATION
DEPARTMENT OF COMMERCE
BEFORE THE
SUBCOMMITTEE ON
INTERNATIONAL FINANCE AND MONETARY POLICY
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE
WASHINGTON, D.C.
March 2, 1983

Mr. Chairman, I am pleased to have the opportunity to testify before this Subcommittee on the subject of national security controls administered by the Department of Commerce. I thank you also for your invitation to respond to the proposals made by several distinguished members of this Subcommittee to amend the national security export control provisions of the Export Administration Act of 1979.

Under the authority of the Export Administration Act of 1979 (EAA), in order to protect the U.S. national security, the Department of Commerce, in consultation with the Department of Defense, exercises control over exports of dual use goods and technology.

The decision-making procedure for imposing or removing national security controls is tied primarily to the COCOM List Review, which takes place every three years. COCOM, short for "Coordinating Committee," is composed of representatives from all NATO countries, plus Japan and not including Iceland. Each review cycle lasts approximately one year, although resolution of certain items may take longer. The U.S. proposals for the List Review are developed by interagency Technical Task Groups and are subsequently agreed to by the Departments of Commerce, Defense, State, Energy, and other appropriate agencies. As COCOM agreement is reached to impose or remove controls, Commerce concurrently amends the Commodity Control List to reflect all changes.

Export controls may also be imposed or removed, other than during the COCOM List Review cycle, at the initiation of any of these agencies, by going through the existing mechanisms for interagency review of export cases. The procedure is for the agency to submit a written request, complete with justification, to the Chairman of the working-level Operating Committee. The proposal is discussed and either approved or rejected in that forum. If unanimous agreement cannot be reached at that level, the matter would be escalated through the Advisory Committee on Export Policy (Sub-ACEP, Deputy Assistant Secretary level; ACEP, Assistant Secretary level) and, if necessary, on up to the cabinet-level Export Adminstration Review Board (EARB).

Mr. Chairman, the Reagan Administration's goal in administering national security controls is to do that which is necessary in order to protect the national security, with minimum impairment to our legitimate commercial trade interests. The Department of Commerce has actively worked to develop a balance between these two aims as mandated by the Export Administration Act -- a balance cognizant of commercial trade interests yet mindful of overriding security objectives; and a balance that produces clear and predictable regulations to guide U.S. industry.

We have not yet achieved all that we should and need to accomplish for the intent of the Export Administration Act to be fully realized. Much more needs to be done and we are working hard towards those ends. But even so, I am proud of the Department's achievements to date. Since January 1981, we have played a key role in the Administration's efforts to:

1. Determine what technology the Soviets need, what they have obtained, how such acquisition has helped the Soviet Union further its goal of military superiority, and what methods the USSR is using to obtain the technology it needs.

2. Develop, on a multilateral basis, the support and commitment of our allies to prevent further technology leakage to the Soviet Union.

3. Work closely with industry segments involved in the development and production of high technology to retard the growing industrial espionage problem. Our own commercial sector is heavily targeted for illegal acquisition efforts. Industrial espionage has become one of the most productive areas for Soviet and East European technology acquisition efforts.

4. Require the intelligence agencies to prepare a comprehensive analysis of Soviet technology acquisition targets and methods.

With your indulgence, I would like to briefly highlight for you the Department's major achievements in several critical areas:

Militarily Critical Technologies List (MCTL)

Commerce is continuing to review the MCTL for the purpose of incorporation into the Commodity Control List (CCL). You may recall that the MCTL, as originated by the Department of Defense, began as a comprehensive listing of keystone equipment and technologies reaching far beyond those normally thought of as militarily critical. In fact, its sheer magnitude made it impractical, if not impossible, to implement and enforce.

The lion's share of the effort to refine the MCTL has been done by the Semiconductor Technical Advisory Committee (TAC), comprised of experts from pertinent Federal agencies and, I want to underscore this, from the business community. The government simply couldn't do this without the help of businessmen and private sector technical people who are the developers and leaders for state-of-the-art technology. Recognizing this invaluable resource, it was the Department of Commerce which pressed for increased industry participation in the MCTL review process.

The Semiconductor TAC is identifying sensitive semiconductor technologies, while simultaneously weighing such critical factors as feasability of control, foreign availability, and the economic impact of controls. I believe this approach best assures a balancing of economic, security and other viewpoints.

The other TACs have been briefed on the MCTL and will be tasked with refining different portions of the MCTL. These TACs are: (1) Computer Sytems TAC, (2) Computer Peripherals, Components and Related Test Equipment TAC, (3) Electronic Instrumentation TAC, (4) Numerically Controlled Machine Tools TAC, and (5) Telecommunications Equipment TAC.

There are no TACs, however, to help refine the other portions of the MCTL, such as aerospace, chemicals, and materials. Consequently, Government officials will meet directly with industry representatives on those areas, outside the forum of Technical Advisory Committees.

Overall, I think it is notable that though the concept of streamlining controls to focus on critical technologies and keystone equipment evolved in 1974, now, ten years later, the job remain unfinished. Even the current revised MCTL is more a listing of modern technologies than it is an identification of truly critical technologies

There is little disagreement that streamlined controls would be both more effective and more enforceable, besides reducing for U.S. industry and Federal agencies the burden of unnecessary controls.

I think such reasoning should be extended to the MCTL. If the MCTL had been produced as was intended, controls would be imposed on only militarily critical technologies and critical keystone equipment; not on all technologies as is currently the case to proscribed countries. While we are struggling to narrow the MCTL to only truly critical technologies, controls continue on all exports of technical data to proscribed countries, whether it be technical data to manufacture baby formula, Pampers, antibiotics, farm combines, or any other item. Broad controls are also currently in effect for many commodities which are not necessarily militarily critical. Hence Senator Garn has valid cause to wonder at the number of applications U.S. exporters must submit, and the number which get approved! After all, if such exports do not contribute to the military potential of proscribed countries, or if no evidence can be found that such exports would be diverted to proscribed countries, there is no reason to deny the exports on national security grounds.

Proposals to Modify Export Controls

The Department of Commerce has received various proposals from different sources to modify export controls. One of them is a proposal from Under Secretary of Defense DeLauer for modification of the Commodity Control List with respect to semiconductor goods and technology.

The Department of Commerce has distributed this proposal for comment through the working-level interagency Technical Data Task Force. Dr. DeLauer's proposal was also reviewed by the Semiconductor TAC as part of Commerce's effort to integrate the MCTL into the CCL. Comments received from the TAC and from the Technical Data Task Force members are being analyzed, as they are received, for incorporation into a preliminary Department of Commerce proposal to amend the technical data section (Part 379) of the Export Administration Regulations. Once completed, this proposal will be widely circulated to interested parties for review and comment. We are hopeful that a proposed regulation amending Section 379 will be published in June of this year.

The Department of Commerce looks favorably on the concepts proposed by Dr. DeLauer. However, the proposal does require very careful study before implementation because changes which on the surface appear to be positive may have unexpected negative consequences once implemented. In addition, industry/Government meetings on Dr. DeLauer's proposal have revealed that, like the MCTL, the proposal is still very general, and does not yet have the specificity required for actual implementation. For example, although the proposal calls for relaxing controls on end products of technology to the proposed country group, it is not intended that all end products will be decontrolled. At this time, Defense has not yet identified what specific end products will be decontrolled.

With respect to technical data, Defense is still undecided on the level of control to extend to any group of countries other than the proscribed countries. Thus, as it stands, the proposal would actually significantly raise the level of control on West/West transfers of technical data. That gives rise to two concerns: (1) Since the West, particularly the COCOM countries, originates high technology, controlling all U.S. technical data, whether sensitive or not, to those countries would not really enhance our national security; and (2) such expansion of controls without special licensing provisions would circumscribe U.S. firms' day-to-day dealings with their own foreign subsidiaries. In short, a great deal more work needs to be done on the proposal.

In a related regard, the President's Export Council (PEC) has also passed a resolution calling for reducing validated export license requirements on exports to COCOM countries, Australia and New Zealand. This resolution will be reviewed by pertinent Federal agencies in conjunction with the PEC.

Let me reiterate that the success of reducing appreciably U.S. export licensing requirements is dependent on an important prerequisite. The basis of U.S. national security controls is to safeguard strategic commodities and technology from diversion to proscribed countries. Thus, relaxation of U.S.

controls to permit export of strategic goods without licensing to companies located in COCOM nations would be difficult without specific assurances of adequate safeguards to prevent illegal diversions to proscribed destinations. Until such assurances are received, Commerce would be opposed to any relaxation of controls.

Finally, Commerce is also carefully examining a proposal by U.S. industry to establish a Comprehensive Operating License procedure. This proposal has many similarities to the DeLauer concept. In summary, it would enable companies to apply to the U.S. Government for certification of its security procedures as between its U.S. presence and overseas subsidiaries, etc. Once having satisfied the Government, it would be authorized to ship goods and technology without a validated license. This proposal, too, will receive careful consideration.

COCOM

Because of widespread foreign availability of many critical technologies, we recognize the difficulty of effective enforcement without multilateral cooperation. Consequently, attention has been focused on strengthening COCOM multilateral controls. The Department of Commerce is actively involved in the 1982-83 COCOM List review, which is focusing on making the voluntary COCOM organization a more effective mechanism for controlling Western transfers of keystone equipment, materials and technical data to the Soviet Union. Work already done on the refinement of the MCTL has provided a firm foundation for U.S. efforts in these negotiations.

We are working with our COCOM partners to strengthen national and multilateral control enforcement efforts -- for export controls would not be very effective unless backed by a strong enforcement program.

Commerce is also leading the effort to institute licensing procedures that will ensure adequate, individual COCOM member country review of proposed transactions prior to licensing. Such harmonization of licensing procedures will be backed by the enhanced enforcement efforts we are seeking.

The Interagency Review Process

The review process has been greatly improved, resulting in a smoother, more coordinated implementation of national security controls. In FY 1982, of the 80,369 license applications received by Commerce, some 6,635 were national security controlled cases to proscribed countries. Of those cases, because of existing delegations of authority from Defense to Commerce, only about 1,800 needed to be sent to Defense for review. Of that number, fewer than 200 required interagency discussions for resolution. And of these, fewer than 20 cases had to be escalated to the Assistant Secretary level or higher. That is only a minute percentage of the total license applications received by Commerce.

Another good point about the interagency review process is that all the principal advisory agencies under the EAA, and other agencies with an interest in export control issues now participate actively. And Commerce's revitalization of the Advisory Committee on Export Policy (both Sub-ACEP and ACEP) has been instrumental in increasing interagency communication lines and expediting resolution of problem cases.

Commerce's efforts to increase direct communication and cooperation with the Department of Defense has also borne laudable results, such as clearing up the backlog of cases at Defense, and ensuring quality review of the MCTL.

Commerce has also intiated several other joint efforts with the Department of Defense to improve national security controls. For example, we are reviewing with Defense the concept of General Distribution Licenses (GDL), and are identifying sensitive commodities which should not be allowed for bulk licensing such as the GDL. We sent a preliminary draft list of such commodities to Defense last August.

Commerce is also identifying for decontrol with Defense those equipment incorporating microprocessors, which are presently controlled under CCL 4529B. Currently, all scientific and analytical instruments incorporating a microprocessor are controlled and require a validated export license, regardless of whether or not they are of strategic significance, or whether there is wide foreign availability. Since this control is unnecessarily broad, we believe it is in the U.S.'s interest to streamline it so that only sensitive items would be controlled. This would insure protection of U.S. national security while, at the same time, removing an impediment to legitimate, non-strategic U.S. trade. Commerce has compiled a list of 94 classes of instruments in this category which we are recommending for decontrol. The list was submitted to the Department of Defense on December 9, 1982. Defense is still reviewing our proposal. So far we have received one item for decontrol -- plating and coating thickness testers.

Foreign Availability

Mr. Chairman, the Department of Commerce has also taken steps to develop a capability to assess foreign availability as mandated by the Act. The first funds appropriated for this purpose were received in FY 1982, when we received $280,000 to pay for external research contracts for foreign availability work. Up to now, foreign availability determinations have been made on controlled commodities only when information is readily available within the U.S. Government and from the applicant on similar foreign commodities and their export status to proscribed countries. Moreover, lacking a foreign availability data base, OEA's small, newly-created foreign availability office has only been able to assess, on an ad hoc basis, a limited number of cases and technology areas.

Progress is now being made. Over the past year, Commerce has hired a foreign availability program manager to help develop a foreign availability program, along with one full-time analyst and several temporary detailees from within Commerce. We have also entered into a one year technical service contract with a private company.

In addition, the Technical Advisory Committees were asked to establish Foreign Availability Subcommittees, and the President's Export Council Subcommittee for Export Control established a Chairman for Foreign Availability to help Commerce establish stronger information collection sources within U.S. industry. We have received excellent support in the form of written material arguing that foreign availability exists in many areas we now control; we are currently analyzing this data.

However, notwithstanding the existence of foreign availability, even when unquestionably proven, the Department of Commerce believes that if a product or technology is sensitive, then strong efforts should be made to negotiate with foreign governments to impose controls on those sources. We have been successful in doing so in a few areas within the past eighteen months and hope to step up these efforts in the future.

Commerce's Enforcement of the EAA

The Department of Commerce has made great strides in enhancing its enforcement capabilities. I would like to briefly highlight the facts that:

1) We have created a separate Office of Export Enforcement headed by a new Deputy Assistant Secretary.

2) We have increased the enforcement budget for export control from $1.7 million in 1980 to nearly $3.8 million in 1984, an increase of 124 percent.

3) We have hired more than 35 criminal investigators and intelligence specialists since August 1982 and are hiring more. These new agents are all highly trained and are experienced criminal investigators.

4) We have devised a strategy based on the need to deploy our criminal investigators to high priority investigations.

5) We have opened two new enforcement field offices and we have obtained and are continuing to procure vehicles, communications, and surveillance equipment. Since August, 1982, in fact, we have committed $365,000 to equip agents with state-of-the-art investigative equipment.

6) We are developing memoranda of agreement with other pertinent agencies regarding procedures such as exchange of information and coordination of investigations, and

7) We are engaged in a program of public presentations designed to actively encourage the private sector to voluntarily comply with the EAA. This effort is in conjunction with OEA's series of lectures. We believe improved private sector understanding of the export control program will reduce inadvertent, unlicensed exports of controlled products and technology.

Results Achieved

The additional resources allocated to the Office of Export Enforcement, and the leadership exercised by the new management of this office have alrady shown significant results. For example, the Office of Export Enforcement is currently working with the United States Attorney's offices around the country on some twenty cases. At least 15 of these cases were referred to the Justice Department by OEE since last June; 7 are either joint Commerce/Customs, or Commerce/FBI/Customs cases; and we are assisting Customs with two of their investigations. Our enforcement efforts are showing results. On January 24, 1983, Office of Export Enforcement special agents stopped a major shipment of semiconductor manufacturing equipment valued at about $400,000, which was being exported to Italy without the required validated export license. The equipment, a photo-repeater system, is controlled for national security reasons. OEE's investigation of this case began about five months ago. Surveillance, an undercover operation, and overseas inquiries were initiated. We expended considerable investigative and support resources in the effort. Such a coordinated effort would not have been possible a year ago.

Another area of success which I would like to bring to the your attention is our enforcement efforts in the Antiboycott area which have been substantial. Settlement agreements rose from 20 in fiscal year 1981 to 43 in fiscal year 1982; penalties assessed rose from $385,000 in FY 81 to $639,750 in FY 82, and warning letters for reporting violations rose from 1,100 in FY 81 to 2,500 in FY 82.

In addition, the Antiboycott Compliance Office last year issued the most significant revisions in the regulations since they were first adopted in 1978. These revisions, among other things, should reduce the paperwork burden on the business community by as much as 30 percent.

In summary, Mr. Chairman, I believe that the Department of Commerce has taken steps which will result in a streamlined and efficient export controls system, but we need to accomplish much more. And to do that we will require your continued assistance. The proposals which have been made by several members of this Subcommittee, and the full Committee, are being carefully reviewed by the Administration. In light of the current review, it would be premature for me to comment on them at this time.

This concludes my prepared statement. I will be pleased to answer any questions at this time.

Senator HEINZ. Thank you.

Senator Gorton, I think Secretary Olmer just started his testimony when you came back. Do you have any opening statement?

Senator GORTON. I do not, Mr. Chairman.

Senator HEINZ. Mr. Schneider?

STATEMENT OF WILLIAM SCHNEIDER, UNDER SECRETARY FOR SECURITY ASSISTANCE, DEPARTMENT OF STATE

Mr. SCHNEIDER. Thank you, Mr. Chairman. It is a privilege to appear before this committee today. As part of your subcommittee's review of the Export Administration Act of 1979, you have asked me to outline State's responsibility under this act. I shall describe some of our negotiations with our allies to strengthen multilateral assistance to national security export controls known as Cocom. I am particularly pleased to have this opportunity since the administration has undertaken vigorous efforts in working with our allies to reduce the transfer of militarily significant technology and equipment to the Soviet Union and the Warsaw Pact.

SOVIETS OBTAIN WESTERN TECHNOLOGY ILLEGALLY

The U.S.S.R. has relied on Western high technology exports in its military buildup and we know that Western technology has been a significant factor in the Soviet development of advanced missiles as well as the advancement of the industry that supports the Soviet warmaking capability. The Soviets obtain Western technology illegally through their intelligence services using classical espionage, as illustrated by recent spy cases in Germany and Italy. But they also evade export controls through diversion, retransfer, and dummy companies.

One legal way technology is passed to the East is by a kind of buyback project in which Western companies contract with Eastern states to export factory equipment and plans for building the plant on credit. It is estimated that these projects involved an exchange of some $10 billion between the East and West in 1980. The West, in return for its exports, receives a share of the product, as part payment.

An example of this is the Siberian gas pipeline in which the pipeline equipment was bought from the West and the fuel sold to Western Europe upon completion of the pipeline. The Kama River truck plant was built with the help of U.S. companies, using Western technology and U.S. export licenses. The plant has been used to supply trucks for the transport of troops to Afghanistan and the support of Soviet conventional military needs. Today, there continues to be a serious threat to our national security from Soviet technology piracy in which increasingly a one-way stream of U.S. technology is moving to the Soviet Union. Nearly all new technological developments have direct or indirect military application.

The critical importance of our technology loss may be emphasized by the example of the Soviet intercontinental range missile's achieving improved accuracy through better gyrosystems. Soviet gyroscopes were developed using precision bearings produced with an advanced grinding machine obtained from the West in the 1970's.

Other examples include U.S.-developed laser optical mirrors with direct military application which have been smuggled to the U.S.S.R. Advanced American computerized drafting equipment was diverted to the Soviets through a foreign corporation. The Soviets illegally acquired an IBM-360 and 370 main-frame computer from the West in 1972. We have noted, much to our despair, that the Soviet RYAD series of computers use the same repair manuals as the IBM computers.

The Soviet technological gains obtained through carefully crafted acquisition programs are providing them with significant savings in time and money in their military R&D programs, rapid modernization of their defense industrial infrastructure, a closing of the gap between our weapons system and theirs, the rapid development of neutralizing countermeasures to our own technological innovation, a freeing of capital to be used in more direct military application, and, indirectly, forcing the allied nations to vastly increase their investment in defense programs.

As a part of the administration's review of the transfer of sensitive technology to the Soviet Union and other Warsaw Pact countries, we have carefully examined the effectiveness of Cocom. We are confident that the national security controls coordinated through this organization have been useful in restricting exports for which license applications have been reviewed by Cocom governments. Without Cocom, competition among Western exporters would have escalated the quantity and quality of technology sales to the Soviet Union and other communist countries.

On the other hand, however, it has become evident during our review that over the years the Soviet Union and the Warsaw Pact have obtained some equipment and technology of strategic and military importance for the West. This has occurred even through violations of Cocom controls, that is, illegal shipments of controlled items, or because such items have not been multilaterally controlled by Cocom at the time of acquisition.

Through diversions and time lags, the multilateral system of export controls coordinated through Cocom, therefore, has not always met the challenge posed by the extensive efforts of the Soviet Union and the Warsaw Pact to obtain militarily significant and sensitive equipment and technologies.

STRENGTHEN AND UPDATE EMBARGO LISTS

The administration has undertaken extensive efforts to deal with this serious problem. President Reagan raised the problem of Western technology transfer to the Soviet Union at the Ottawa summit in July 1981. These discussions culminated in a high level meeting in Paris in January of last year, the first ministerial level meeting in that organization since the late 1950's. We were greatly encouraged by the results of the meeting. The member governments confirmed the importance of the organization for their common security interests, and agreed on a number of measures to be taken for improving its effectiveness. They agreed to strengthen and update the existing embargo lists to explore the harmonizing of licensing practices of the national governments and to strengthen their enforcement operations.

During the past year, we have been working with our Cocom allies to follow up on these important agreements. I have already mentioned the Cocom list review. For this exercise, the United States has submitted over a hundred proposals, most of which contain elements for strengthening the embargo; however, we are also proposing the deletion of noncritical equipment and technologies from the list. This is in line with another recommendation of the high level meeting.

Since early October, the national delegations have been negotiating on a near daily-basis on the technical details of these proposals. Although the confidentiality of the proceedings will not permit me to go into details in this open session, I can indicate that we have already obtained committee agreement to a number of key U.S. proposals, and are very close to full accord on a number of others; however, many months of technical negotiations lie ahead, and it is likely that the list review will not be fully completed until the end of this year.

At U.S. initiative, last May, a meeting of the Cocom Subcommittee on Export Controls was held to review a number of U.S. proposals for strengthening national enforcement activities and harmonizing license procedures. This advisory body, composed of national licensing and enforcement officials, agreed to a large number of recommendations which if implemented by national authorities could result in significant improvements in the enforcement activities and a narrowing of the licensing differences of the individual governments.

In the full Cocom committee, the United States is urging the other governments to follow up on a number of these other recommendations concerning harmonization of licensing documentation.

Furthermore, during this week, we have two interagency teams in Europe holding bilateral discussions with our European allies on enforcement and harmonization issues.

One of the more serious problems Cocom faces in improving its effectiveness, is the difficulty of controlling the export or reexport of commodities from the non-Cocom countries to the Communist states.

Cocom countries, unfortunately, do not constitute a monopoly in the market for all high-technology items. The Soviet Union and other Warsaw Pact countries are aware of this, and occasionally are able to obtain some equivalent high-technology products from non-Cocom sources.

There is also a risk of diversion of Cocom-controlled and Cocom-origin equipment and technologies through such third countries.

The United States tends to deal with this diversion problem in part by requiring licenses for reexports of the U.S.-origin embargoed products from third countries, a so-called extraterritorial action, that has been the subject of some criticism.

Our Cocom allies cite legal and administrative reasons for not having similar reexport licensing requirements. Nevertheless, we have been urging them to institute other effective measures to deal with the problem of diversions from third countries.

Furthermore, the United States maintains a dialog with certain non-Cocom industrial countries on the export control and diversions problem.

Before leaving the subject of Cocom, I would like to call your attention to the consensus we have reached with our major allies on the need to review together the security implications of various aspects of East-West economic relations.

Two important elements of this review ought to be carried out in Cocom. The first is the strengthening of Cocom itself, and the second is a review of other high technologies, including those with oil and gas applications which may have security implications for the West. We also have proposed the scheduling of a second high-level Cocom meeting this spring.

The State Department's role and responsibility in the export control area are based in part on the general responsibility of the Department for advising the President on the conduct of foreign policy, and in part, on the specific legislative and executive directives, including the Export Administration Act, the Arms Control Export Act of 1976, and Executive Order 11958. These are all based on the fundamental relationship between export controls and our overall policy toward other nations.

The State Department plays a major role in the administration of three distinct types of export controls: munitions, nuclear materials, and other items administered by the Department of Commerce under the provisions of the Export Administration Act of 1979.

I will limit my remarks to this third category, as this is the subject of your hearing today. The Department of State participates actively in the formulation of U.S. national security export control policy, and decisionmaking on the various interagency committees set up for this purpose.

These include the Advisory Committee on Export Policy, chaired by the Department of Commerce, and its Cabinet-level counterpart, the Export Administration Review Board.

When policy issues go beyond the Cabinet-level review board, the Department of State participates in the National Security Council, or whatever other White House review procedures may be involved.

Section 5(k) of the Export Administration Act of 1979 places the responsibility for conducting negotiations with other governments regarding security export control matters on the Secretary of State, who acts in consultation with the Secretary of Defense, the Secretary of Commerce, and the heads of other agencies.

The conduct of their activities on Cocom and other multilateral export control matters is coordinated primarily through the Economic Defense Advisory Committee, or EDAC, as it is known.

EDAC is chaired by the Assistant Secretary of State for Economic and Business Affairs, under the authority delegated to him by the Secretary of State.

Its membership includes all agencies concerned with the administration of security export controls. Various interagency working groups within the EDAC structure are responsible for preparing U.S. positions for negotiating in Cocom and for reviewing the export cases submitted to that organization by the other Cocom member governments.

Under EDAC's general guidance, 11 technical task groups developed the U.S. list review proposals submitted to Cocom. Interagency teams are now in Paris working for committee approval of these proposals.

Another EDAC working group also coordinates interagency review of information on alleged diversion of Cocom controlled items. During the past year, we have also established the senior interagency group on the transfer of strategic technology, which I have the pleasure of chairing. In this group, we attempt to provide a forum for policy determination, to coordinate the ongoing work of the agencies and interagency organizations.

One of the important functions of this group is the identification of problems and the tasking of activities to deal with them.

For example, the senior group has commissioned a public awareness program, and a number of intelligence assessments of technology diversion problems in specific areas. It has encouraged increased attention to the improvement of U.S. extradition and legal assistance treaties with other countries to strengthen export control enforcement. It has also initiated bilateral discussions with specific non-Cocom governments and a review of the training of U.S. officials involved in U.S. export matters.

Let me touch briefly on a few other State Department export control functions. Under the provisions of the EAA, the State Department also participates in a consultative capacity with respect to short supply controls, to insure that adequate consideration is given to foreign policy factors, as well to our bilateral relations with other states.

Senator HEINZ. Dr. Schneider, we're going to talk about foreign policy controls at our next hearing. So we'll put all of your remarks in the record now.

Mr. SCHNEIDER. Fine. That was the end. Foreign controls were the last piece, anyway.

Thank you, Mr. Chairman.

[The complete statements follow.]

STATEMENT OF WILLIAM SCHNEIDER, JR., UNDER SECRETARY FOR SECURITY ASSISTANCE, SCIENCE AND TECHNOLOGY, DEPARTMENT OF STATE

Mr. CHAIRMAN: As part of your subcommittee's review of the Export Administration Act of 1979, you have asked me to outline State's responsibilities under this act. I shall also describe some of our negotiations with our allies to strengthen the multilateral system of national security export controls known as Cocom. I am particularly pleased to have this opportunity since the admininistration has undertaken vigorous efforts in working with our allies to reduce the transfer of militarily significant technology and equipment to the Soviet Union and the Warsaw Pact.

We know that the development of sophisticated weapons is based on a myriad of advanced supporting technologies that are not innately restricted to military versus civilian applications. Consequently, it becomes increasingly more difficult to identify and control commercial transactions that can support military production, and that could constitute a threat to our national security. This underscores the need for increasing Western efforts to develop stronger and more effective controls on the transfer of technology from the West to the East. The U.S.S.R., for example, has relied on Western high technology exports in its military build-up, and we know that Western technology has been a significant factor in the Soviet development of advanced missiles as well as in the advancement of industry that supports the Soviet war-making capability.

Current controls are based on the importance of advanced technology in military forces and its supporting industrial sectors and the existence, partly due to government sponsored research and development and partly due to differences in industrial capabilities, of a technology gap between the U.S. and the Soviet Union. A technological gap in our favor is also a means of reducing the risk of technological surprise. Technological breakthroughs given the current rate of technological change is a real possibility and a real danger to our security in that a particular technological development could give the discoverer a decisive advantage. Consequently, one of the major means of preventing war is to avoid technological surprise.

The Soviets obtain Western technlogy illegally through their intelligence services using classical espionage as illustrated by the recent spy cases in Germany and Italy. They also evade export controls through diversion, retransfer, and dummy companies. One legal way technology is passed to the East is through a kind of buyback project in which Western companies contract with Eastern states to export factory equipment and the plans for building the plant on credit. It is estimated that these projects involved an exchange of some ten billion dollars between the East and the West in 1980. The West in return for its exports receives a share of the products as part payment. An example of this is the Siberian gas pipeline in which pipeline equipment is being bought from the West and the fuel is sold to Western European upon completion of the pipeline. The Kama River truck plant was built with the help of U.S. companies using Western technology and U.S. export licenses. The plant has been used to supply trucks for the transport of troops to Afghanistan and the support of Soviet conventional military needs.

Today, there continues to be a serious threat to our national security from Soviet technology piracy, in which an increasing one-way stream of U.S. technology is moving to the Soviet Union. Nearly all new technological developments have direct or indirect military application. The critical importance of our technology loss may be emphasized by the example of the Soviet intercontinental-range missiles achieving improved accuracy through better gyroscope systems. The Soviet gyroscopes were developed using precision bearings produced with advanced grinding machines obtained from the West in the 1970's. Other examples include: U.S. developed laser optical mirrors with direct military application have been smuggled to the USSR. Advance American computerized drafting equipment was diverted to the Soviets through a foreign corporation. The Soviets illegally acquired IBM 360 and 370 mainframe computers from the West in 1972. We have noted to our despair that the Soviet RYAD computer series uses the same repair manuals as the IBM computers.

The Soviet technological gains obtained through a carefully crafted acquisition program are providing them with: Significant savings in time and money in their military research and development programs; rapid modernization of their defense industrial infrastructure; a closing of gaps between our weapons systems and theirs; the rapid development of neutralizing counter measures to our own technological innovations; and a freeing of capital to be used in more direct military application.

Before moving to our current negotiations with our allies, I would like to review a few facts about Cocom. The Coordinating Committee was established as a voluntary organization in 1950. Its present membership includes Japan and all the NATO countries. Except Iceland and Spain. But it has no formal relationship to NATO or to any other organization. It is not based on any treaty or executive agreement. The members therefore have no legal obligation as such to participate in Cocom or to abide by commitments made there. On the other hand, over its more than three decades of existence there have been only a few instances when a member nation has exercised its sovereign right to deviate from Cocom decisions. Many of the other member governments continue to make it clear to us that they attach considerable importance to maintaining Cocom's informal nature and the confidentiality of its proceedings.

All important Cocom decisions are made on the basis of unanimity, which is perhaps the basic reason for its durability. For example, no change in the Cocom list can be made, and no specific export of controlled items can be approved, if any member objects.

Traditionally, Cocom has had three major functions:

The first is the establishment and updating of the lists of embargoed products and technologies. Although the Cocom lists are not published, they provide the basis for the national control lists administered by each of the member governments. There are three Cocom lists: a list of military items and technologies; an atomic energy list; and a third list covering commodities and technologies which can have both military and civil applications. Cocom is now conducting a major review of these lists to ensure that they reflect current strategic concerns. Such reviews are conducted about every three years.

Secondly, Cocom acts as the clearinghouse for individual requests submitted by the member governments to permit the shipment of specific embargoed items to the proscribed countries when the risk of diversion to military use is sufficiently small. The proscribed countries for Cocom purposes are the Soviet Union, the other Warsaw Pact countries, Albania, the PRC, and the other communist countries in

Asia. Cocom reviews on an annual basis between 1200 and 1500 of these possible export transactions, rejecting those exports which are too risky.

Thirdly, the Committee serves as a means of coordinating the administration and enforcement activities of the member governments.

Cocom has a permanent secretariat which is located in Paris. Its staff is small, between twelve to fifteen members, and its activities are generally confined to translation, transcription, interpretation, and the publication and distribution of documents.

The permanent U.S. delegates to the organization are State Department officers who, for administrative purposes, are attached to our delegation to the OECD. This delegation is augmented by scores of technical experts and other U.S.-based officials as needed for the negotiations in Cocom.

As part of this Administration's review of the transfer of sensitive technologies to the Soviet Union and the other Warsaw Pact countries, we have carefully examined the effectiveness of Cocom. We are confident that the national security controls coordinated through this organization have been useful in restricting exports of items for which license applications have been reviewed by Cocom governments. Without Cocom, competition among Western exporters would have escalated the quality and quantity of technology sales to the Soviet Union and other communist countries. On the other hand, it became evident during our review that over the years the Soviet Union and the Warsaw Pact have obtained some equipment and technology of strategic and military importance from the West. This has occurred either through violations of the Cocom controls (i.e. illegal shipments of controlled items) of because such items have not been multilaterally controlled by Cocom at the time of acquisition. Through diversions or time lags, the multilateral system of export controls coordinated through Cocom therefore has not always met the challenge posed by the extensive efforts of the Soviet Union and the Warsaw Pact to obtain militarily sensitive equipment and technologies. The Soviet efforts to obtain Western technology continue unabated as evidenced by the recent arrest in Germany of a Soviet trade official who is charged with trying to illegally gain Western controlled electronic information.

The administration has undertaken extensive efforts to deal with this serious problem. President Reagan raised the problem of Western technology transfer to the Soviet Union at the Ottawa Summit in July 1981. These discussions culminated in a high level meeting in Paris in January of last year, the first ministerial-level meeting in that organization since the late 1950's. We were greatly encouraged by the results of that meeting. The member governments confirmed the importance of the organization for their common security interests and agreed on a number of measures for improving its effectiveness. They agreed to strengthen and update the existing embargo lists, to explore harmonizing the licensing practices of the national governments and to strengthen their enforcement operations.

During the past year we have been working with our Cocom allies to follow up on these important agreements. I have already mentioned the current Cocom list review. For this exercise the United States has submitted over 100 proposals, most of which contain elements for strengthening the embargo. However, we are also proposing the deletion of noncritical equipment and technologies from the lists. This is in line with another recommendation of the high level meeting. Since early October the national delegations have been negotiating on a near daily basis, on the technical details of these proposals. Although the confidentiality of the proceedings will not permit me to go into details in this open session, I can indicate that we have already obtained Committee agreement to a number of key U.S. proposals and are very close to full accord on a number of others. However, many months of technical negotiations lie ahead, and it is likely that the list reveiw will not be fully completed until the end of this year.

Perfecting an export control system is a long and difficult task. This is also evident from our continuing efforts to follow up on the harmonization of national licensing practices and enforcement activities. We are dealing with the national administration of controls by fifteen individual and sovereign nations, each with its own laws, regulations, and procedures. Our initiatives on harmonization reflect our concern that the differences in national licensing practices at times penalize U.S. firms competitively and can cause loopholes in the common embargo.

At U.S. initiative, last May a meeting of the Cocom Subcommittee on Export Controls was held to review a number of U.S. proposals for strengthening national enforcement activities and harmonizing licensing procedures. This advisory body, composed of national licensing and enforcement officials, agreed to a large number of recommendations which, if implemented by the national authorities, could result in significant improvements in the enforcement activities and a narrowing of the licensing differences of the individual governments. In the full Cocom Committee, the United States is urging the other governments to follow up on a number of these recommendations concerning harmonization of licensing documentation. Furthermore, during this week we have two interagency teams in Europe holding bilateral discussions with our European allies, on enforcement and harmonization issues.

One of the more serious problems Cocom faces in improving its effectiveness is the difficulty of controlling the export or reexport of commodities from non-Cocom countries to the Communist states. Cocom countries unfortunately do not constitute a monoploy in the market for all high technology items. The Soviet Union and the other Warsaw Pact countries are aware of this and are occasionally able to obtain some equivalent high-technology products from non-Cocom sources. There is also a risk of the diversion of Cocom-controlled Cocom-origin equipment and technologies through such third countries. The United States attempts to deal with this diversion problem in part by requiring licenses for reexports of the U.S.-origin embargoed products from third countries—a so-called "extraterritorial" action that has been the subject of some criticism. Our Cocom allies cite legal and administrative reasons for not having similar reexport licensing requirements. Nevertheless, we have been urging them to institute other effective measures to deal with the problem of diversions from third countries. Furthermore, the United States maintains a dialogue with certain non-Cocom industrialized countries on the export control and diversions problems. I cannot go into details in this open hearing, but I am happy to report that during the past year we have made considerable progress with several non-Cocom countries to deal with the problem of the diversion of U.S.-controlled commodities.

Before leaving the subject of Cocom, I would like to call your attention to the consensus we have reached with our major allies on the need to review together the security implications of various aspects of East-West economic relations. Two important elements of this review are to be carried out in Cocom. There is first the strengthening of Cocom itself. As I have outlined above, we have been working with our allies on this during the past year, and we hope to see further positive steps taken in the months ahead. Secondly, a review of other high technologies, including those with oil and gas applications which may have security implications for the West, is being initiated. In order for Cocom member nations to give timely policy-level guidance to their Cocom delegations in both of these broad areas of activity, we have propsed the scheduling of a second high level Cocom meeting this spring.

Let me move on to State's responsibilities under the Export Administration Act and other related laws and regulations. The State Department's role and responsibilities in the export control area are based in part on the general responsibility of the department for advising the President on the conduct of foreign policy and in part on specific legislative and executive directives, including the Export Administration Act of 1979, the Arms Export Control Act of 1976, and Executive Order 11958. They are also based on the fundamental relationship between export controls and our overall policy towards other nations.

The State Department plays a major role in the administration of three distinct types of export controls: (1) munitions, administered by State; (2) nuclear materials, administered by the NRC and the Department of Energy; (3) other items administered by Commerce under the provisions of the Export Administration Act of 1979. I will limit my remarks to the third category since this is the subject [illegible] hearing today.

NATIONAL SECURITY CONTROLS

The Department of State participates actively in the formulation of [illegible] national security export control policy and decision making on the various interagency committees set up for this purpose. These include the Advisory Committee on Export Policy (ACEP) chaired by the Department of Commerce at the assistant secretary level, its working-level group—the operating committee, and its cabinet level body—The Export Administration Review Board. When policy issues go beyond the cabinet level review board, the Department of State participates in the National Security Council or whatever other White House review procedures may be involved.

Section 5(k) of the Export Administration Act of 1979 places the responsibility for conducting negotiations with other governments regarding security export control matters on the Secretary of State, who acts in consultation with the Secretary of Defense, the Secretary of Commerce, and the heads of other agencies. While State thus has the lead role in conducting negotiations in Cocom, I would like to emphasize that this is clearly an interagency activity. The conduct of our activities on Cocom and on other multilateral export control matters is coordinated primarily within the Economic Defense Advisory Committee structure, or EDAC as it is known in the bureaucracy.

EDAC is chaired by the Assistant Secretary of State for Economic and Business Affairs under the authority delegated to him by the Secretary of State. Its membership includes all agencies concerned with the administration of our export control program. Various interagency working groups within the EDAC structure are responsible for preparing US positions for negotiating in Cocom and for reviewing the export cases submitted to that organization by the other Cocom member governments.

The broad interagency basis of our activities in Cocom is illustrated by our preparations for and the support of our List Review negotiations. Under EDAC's general guidance, eleven technical task groups composed of more than 100 technicians from many agencies, intelligence organizations, and military technical commands developed the U.S. List Review proposals. Interagency teams are now in Paris working for Committee approval of those proposals. Another EDAC working group also coordinates the interagency review of information on alleged diversions of Cocom-controlled items and initiates diplomatic approaches to other governments on specific diversion cases.

During the past year we have also established another interagency group to provide policy guidance and coordination in the field of technology transfer. This is the Senior Interagency Group on the Transfer of Strategic Technology, which I have the pleasure of chairing. In this group we attempt to provide a forum for policy determination to coordinate the ongoing work of the agencies and interagency organizations. One of the important functions of the group as it has developed over the past nine months is the identification of problems and the tasking of activities to deal with them. For example, the Senior Group has commissioned a public awareness program and a number of intelligence assessments of technology diversion problems in specific areas and has encouraged increased attention to the improvement of U.S. extradition and legal assistance treaties with other countries to strengthen export control enforcement. It also initiated bilateral discussions with specific non-Cocom governments and a review of the training of U.S. officials involved in export control matters. I believe that this Senior Interagency Group will continue to play an important role in our efforts to deal with the problem of the transfer of sensitive technologies to the Soviet Union and the Warsaw Pact.

Let me touch briefly on some other State Department export control functions.

SHORT SUPPLY

Under the provisions of the Export Administration Act the State Department also participates in a consultative capacity with regard to short supply export controls. The State Department's role here is primarily to insure that adequate consideration is given to foreign policy factors as well as to our bilateral reflations with other states.

FOREIGN POLICY CONTROLS

Section 6 of the Export Administration Act of 1979 also gives the State Department a major consultative role with regard to foreign policy export controls. While export license issuance authority is with the Department of Commerce, the Secretary of State is provided the right to review any relevant export license application. The Department's role with regard to these foreign policy controls is highlighted by criteria described in the Act, such as:

"The probability that such controls will achieve the intended foreign policy purpose."

"The compatibility of the proposed controls with the foreign policy objectives of the United States, including the effort to counter international terrorism, and with overall United States policy toward the country which is the proposed target for the controls."

"The reaction of other countries to the imposition or expansion of such export controls by the United States."

"The foreign policy consequences of not imposing controls."

In closing I would like to add that the Department of State Personnel in U.S. Foreign Service posts abroad also provide operational assistance to other elements of the export control community in carrying out the purposes of the Export Administration Act. This includes providing information on overseas consignees and checking out the use to be made of exports from the United States, and doing post-licensing checks as a precaution against diversions.

I hope that my brief remarks have given some insight into the many aspects of the Department's involvment in this complex area of export control.

Senator **Heinz**. My understanding is, I'm sure all of you are fairly busy, but I'm advised by staff, Mr. Schneider, you have a meeting shortly; is that correct?

Mr. **Schneider**. I have a 12:15 meeting over in the Congress.

Senator **Heinz**. Let me start with a question to Dick Perle, which I hope will get at the heart of the problem. Clearly, it has been established by Secretary Olmer and others, that the Eastern bloc owes a great deal of its military technologies to Western sources.

FAULTY LICENSING AND ESPIONAGE

The question I've got is how much of that is the result of faulty licensing; how much of it is lax enforcement; and how much of it is from espionage?

How much of it comes from us and how much of it comes from our allies?

Mr. **Perle**. Senator, I wish it were possible to be precisely quantitative in answering this question. I would first observe that you have identified the mechanisms by which in the aggregate, a considerable transfer of militarily relevant technology has taken place.

And if I may further observe, it is the combination of those several mechanisms that together have produced a significant improvement in Soviet military capabilities, and a consequent additional burden for defense on the taxpayers.

If you remove any one part, any one mechanism, whether it is the legal trade or the illegal trade, or espionage, you would prevent the Soviets from accomplishing their purpose, which requires all three.

Having said that, I think I have to say that much of the damage which occurred happened in the midseventies, when the administration attempted to test the proposition that an expansion of trade with the East would enmesh the Soviet Union and its allies in a web of commercial relationships that would have a restraining influence on Soviet behavior in the world.

And in particular would lead in the long-run to a deemphasis on military power by the Soviets. The evidence is that that theory having been tested, was defective. Soviet military investment increased in parallel with the increased trade.

The trade became ironically one of the means by which the effectiveness of that military investment was increased.

So many of the transfers that now trouble us took place in that period during the midseventies, and were not a consequence of the defects in the licensing process, but rather in the judgment of the Administration that administered the licenses. There's no substitute for good judgment.

Senator **Heinz**. So it was faulty licensing in the sense that bad decisions were made, as opposed to the fact that there was something wrong with the process?

Mr. **Perle**. That's correct.

Senator **Heinz**. Secretary Olmer, would you agree with that assessment?

Mr. OLMER. Yes, I agree. I'd like to make another comment, I think, that's related. The United States has a control system. Whether it works or not, it's 100 times more elaborate than that of any other nation in Western Europe.

The consequence of that is that U.S. controls on technology are by and large, more explicit than those of our Cocom allies.

And that is derived from an earlier period in which it was felt that the Soviets were backward and needed products, that they couldn't use the technology.

Mr. Perle points out that that was a flaw in our perception of the nature of our relationship, of the threat posed.

The fact is that our business community under any formulation is in a position of having policies imposed on it that are prejudicial to commonsense, as well as to any realistic attempt to control.

And until and unless we achieve a better understanding and a more effective way of implementing that understanding, we're not going to achieve the objectives.

Senator HEINZ. Let me ask Mr. Schneider, since you and Secretary Olmer mentioned Cocom, I think Secretary Olmer probably very correctly described that we have not only our own unilateral system, but we make a variety of requests on Cocom, not only for exemptions of Cocom, but we ask them to do things that you yourself mentioned.

The limitations on reexporting are doubly resisted by those countries. What mechanism, if any, exists to insure compliance on Cocom controlled products, once we've agreed to control technology?

Mr. SCHNEIDER. Well, compliance, because Cocom is a voluntary organization, compliance is dependent upon the will of the individual countries to enforce decisions that they have jointly agreed to.

Cocom operates by consensus and, therefore, all of the countries must agree if we are going to have an effective control.

I think what has changed in the situation is, however, that in the course of the effort the U.S. Government has made, we have gone a considerable distance in persuading the Allies of the consequences of the transfer of technology from the industrial countries of the alliance to the Soviet Union.

This has, in turn, stimulated a renewed interest in this matter and the prospects for a higher order of agreement. The point that I mentioned about the agreement, the high-level meeting that they would agree to harmonize enforcement, I think represents the front-end of a commitment to do considerably better in this regard.

Senator HEINZ. Let's assume that they say they want to enforce the same kind of restrictions on a Cocom controlled item.

Do they have the means to do it?

Mr. SCHNEIDER. In many cases, they do not have the means in place at this point. But the commitment that the Government has made to harmonize the enforcement procedures would imply that they would generate the enforcement assets that would contribute to this.

Senator HEINZ. Would the entire effort we're making, including that to toughen compliance, to get a generally stronger effort made on Cocom, would that effort be enhanced if we were to try to raise Cocom to treaty status?

Mr. **Schneider**. I don't think it would necessarily require raising it to treaty status. Because we don't have treaty status now.

And we have been able to get a fairly high order of consensus on the part of the members that they need to improve enforcement.

So I think this can be done without going to treaty status. Obviously if you did go to treaty status, you would have a stronger legal basis for doing so.

But the willingness seems to be there on the part of the allied countries to do so. So I think we should exploit this opportunity that we have, rather than expend the effort at this point to try and raise it to treaty status.

LOSS OF PRODUCTION TECHNOLOGY

Senator **Heinz**. One of the points that Mr. Perle made earlier was that, in particular, we've lost to the Eastern bloc technology to produce high tech kinds of products.

Do the allies share our deep concern about the loss of production technology?

Mr. **Schneider**. If I understand what you're referring to with respect to production technology, they certainly share the concern we have about the consequences of the East being able to get access to this technology.

I think that's been evident in the briefings that we've provided.

Senator **Heinz**. What about countries like Sweden, Switzerland, and Austria, which aren't in Cocom, which have a great deal of access to that kind of technology?

Mr. **Schneider**. I have a high order of optimism at this point that Cocom countries such as these will acknowledge our concerns.

Senator **Heinz**. Can you say the same for countries like Taiwan, Singapore, and Brazil, the so-called newly industrialized countries?

Mr. **Schneider**. All of these countries have an interest in the world system of trade. I understand the particular concerns that the United States and the other countries of Western Europe have, so I think if we can get together with our allies and achieve a consensus on the technology that should be controlled, I think we will have a good opportunity to deal with the problems posed by some of the other newly industrialized countries as well.

Senator **Heinz**. Secretary Olmer, did you have a point you wanted to make?

Mr. **Olmer**. The road to control is paved with good intentions. We hear them expressed all the time, in a lot of different places. The problem is in translating commitments at a policy level into action at a procedural level.

That's where the burden exists, and that's where our efforts need to be placed. I cannot, in this sort of hearing, elaborate on the experience to date, but in general I would be prepared to say it has not moved at the pace that we should have a right to expect, and that our business community has a right to expect from its involvement in this process.

Senator **Heinz**. I will be returning for some more questions in a few minutes, but my time has expired. Senator Lautenberg.

Senator **Lautenberg**. Thank you, Mr. Chairman.

Mr. Schneider, you talked about obtaining 360 and 370 IBM's illegally early in the 1970's. Was that equipment on the restricted list at that point?

Mr. SCHNEIDER. Yes, it was.

Senator LAUTENBERG. That stuff is so available commercially, through export, et cetera, it's almost incredulously that I address this. The Russians or whoever couldn't get their hands on it?

Mr. SCHNEIDER. Yes. They can get their hands on it, illegally.

Senator LAUTENBERG. Legally?

Mr. SCHNEIDER. Not legally, not for export. The computer was illegally diverted.

Senator LAUTENBERG. That stuff has been, in the vernacular of the business community, "knocked off" by so many other manufacturers. What I am trying to understand here is, are we swinging at ghosts, or are we truly impairing our security needs by this licensing process?

If I may, I want to ask Mr. Olmer something. You talked in your remarks about the number of licenses that were reviewed with the Department of Defense. I think you said there were 1,800. Then we got it reduced down to 200. What happens when you get to that point? Is there an overriding decisionmaking body?

Mr. OLMER. The reduction to 200 meant at that level 200 cases was referred to a committee composed of deputy assistant secretary level people. They reduced it to 20. Twenty were considered at the assistant secretary level, and that resolved an issue. In national security cases to proscribed destinations, the Defense Department has, in effect, a veto, and we do operate on a consensus on exports to proscribed destinations.

That is to say, if agreement isn't reached, and it is not a case that in our judgment warrants referral to the Cabinet or to the President, then the license will be denied.

Senator LAUTENBERG. In the process of the Commerce Department's review of licensing, is the Defense consideration, the security consideration, the only concern? Are there commercial concerns, industrial espionage? Do we have restrictions on products that we would like to keep made here?

Mr. OLMER. You mean for reasons of maintaining industrial mobilization capability?

Senator LAUTENBERG. No. For protecting the commercial opportunity.

Mr. OLMER. No, sir. The Export Administration Act provides us authority to administer controls for national security purposes as well as for reasons of foreign policy and short supply, not for commercial reasons.

Senator LAUTENBERG. Short supply as it relates to——

Mr. OLMER. In the present law, there is a provision regarding a ban on exports of Alaskan crude oil, on exports of refined petroleum products——

Senator LAUTENBERG. Essential to our——

Mr. OLMER. Essential, in someone's judgment, to our national interests. The list also includes horses and it includes unprocessed red cedar—a type of wood grown in a certain congressional district. [Laughter.]

Senator LAUTENBERG. Not in New Jersey.

OK. As a prime mover, Mr. Olmer, in export trade for our business community, which I think is what your role is, if you had to, in general, classify our efforts, our licensing restrictions, do you think that they have caused an overall significant impairment in our international trade business?

Mr. **Olmer**. Has it harmed the business interests? Yes. I would say it has.

I would say that that cost could have been reduced, but that some cost is both necessary and worth it. I wouldn't by any stroke propose to eliminate a system of controls. Unfortunately, someone has to pay the price, and that price is sometimes unavoidable. I think it's been too large, and we are working to reduce it.

Senator **Lautenberg**. Are the lists too restrictive?

RESTRICTIVE LIST FAR TOO LARGE

Mr. **Olmer**. The list is far too large. It encompasses—and you know, I am making a value judgment. Mr. Perle will undoubtedly reserve on that. He might agree the list is too large, but whatever—you have asked me, and I am giving you my best judgment.

The list is too large. It contains far too many products which do not, in my view, have military significance, but that's not a judgment I am even empowered to make. That's the Defense Department's. And I cede that responsibility to them.

But we do have a number of engineers that are licensing officers. When applications are received for the export of commodities of a technology nature, they are reviewed by people with training, with engineering degrees, and we use their advice, in consultation, often, with the Department of Defense, to arrive at a judgment as to whether or not the dual use potential is substantial.

Remember, now, we are not talking about military equipment directly. It's only equipment or technology which has the potential for military application. If you look at a microprocessor in a shoebox, clearly, it has a military potential—while the President has made a statement that we are not engaged and we do not intend to engage in economic warfare.

So you begin to have to make value judgments, all the way up the line. Sometimes I think we are right. Sometimes I think we're wrong.

Senator **Lautenberg**. The biggest concern I have, Mr. Schneider—forgive my amazement at the restriction on IBM-360s and 370s That stuff is so basic. And I used 360 equipment in 1965. The 370 followed on very shortly thereafter.

Those techniques are obsolete, and, again, so commercially essential for our protection, and what not, and the difficulty, again, deals with the dual technology or the dual use.

And Mr. Perle, I think, would err on the side, if asked, of conservatism. On the other hand, the business community is so dependent on international trade and so much of this stuff is available through all kinds of sources, whether it's Radio Shack or other similar type places.

Mr. **Perle**. Senator, when I say, as I said in the earlier closed session, that if one had to err I would rather err on the side of denying, because it might have significant military consequences.

That doesn't mean that we ought to be mindless or foolish about it. We certainly ought not to try to control the uncontrollable.

I would agree with what my colleague Lionel Olmer has said, that the costs have been higher to the business community than they should have been. I think that's partly the result of inefficiency. I also think the costs to the country have been far higher than they should have been, and some transactions that did take place have had a profound effect on Soviet military capability and will cause us to spend a great deal of money.

So the issue is how to minimize the inefficiencies in the administration of controls. It may take more commerically viable——

Mr. Schneider. I did my Ph. D. thesis using an IBM-360 in the late 1960's, so I am familiar with it, also. I know it's a very good computer, but having it illegally diverted to the Soviet Union has had the effect of improving the effectiveness of their air defense, which in turn has obliged us to go into a whole new generation of bombers, and bomber penetration weapons. It's going to cost us billions of dollars. The improvement in Soviet missile accuracy has rendered our Minuteman force vulnerable, and is forcing us to spend tens of billions of dollars on a fix for that problem.

The point is that while these computers may be obsolete or obsolescent by American standards, compared to where the Soviets are, and where the gaps are in their capability, these make a very big difference to the performance of their military forces, and I think that's why we need to pay particular attention.

The problem is much more difficult, I agree, when a product such as the IBM-360 is fairly widely available commercially.

Senator Lautenberg. You can't give them away to charities today. They won't accept them. That's how antiquated this system is. I tried. In my former life.

But, OK. The debate really centers on what is essential for our protection, and what's not, and the difficulty, again, deals with the dual technology or the dual use.

And Mr. Perle, I think, would err on the side, if asked, of conservatism. On the other hand, the business community is so dependent on international trade and so much of this stuff is available through all kinds of sources, whether it's Radio Shack or other similar type places.

Mr. Perle. Senator, when I say, as I said in the earlier closed session, that if one had to err I would rather err on the side of denying, because it might have significant military consequences, that doesn't mean that we ought to be mindless or foolish about it. We certainly ought not to try—what do I think—we do try to control the uncontrollable.

I would agree with what my colleague Lionel Olmer has said, that the costs have been higher to the business community than they should have been. I think that's partly the result of inefficiency. I also think the costs to the country have been far higher than they should have been, and some transactions that did take place have had a profound effect on Soviet military capability and will cause us to spend a great deal of money.

So the issue is how to minimize the inefficiencies in the administration of controls. It may take more intelligent controls. I think we all agree on that.

Senator LAUTENBERG. The definition of "militarily critical" makes it impossible to deal with.

Mr. PERLE. The concept of the militarily critical technology list represents a major move in the direction Lionel discussed, which is to control production technology as our first order of concern, and to worry a good deal less about the products.

Senator LAUTENBERG. Mr. Schneider, is there any suggestion you could make on what we could do to get Cocom to be more responsive to our needs?

Mr. SCHNEIDER. I think that's the focus of our effort now. The first effort we are making in this regard is to try to achieve consensus among the Cocom members.

Senator LAUTENBERG. Right. That's the voluntary side of the thing.

Is there anything else that could be more forceful in that direction? Senator Heinz earlier suggested elevating this to treaty status. You said you didn't think that would do it.

Mr. SCHNEIDER. Let's say that treaty status would obviously elevate the legal significance of what is done, because the hemorrhage of technology is so substantial at this point, it seems to me that our diplomatic credit card, so to speak, should in the first instance be expended in trying to take advantage of the revised attitudes among our allies who are now, from what we can tell, quite interested in cooperating with us in this regard—to try to get this agreement nailed down in detail so that we can not only have a consensus within the alliance, but we can provide our business community with a set of clear and predictable guidelines as to what technologies are controlled. I think we might defer until after that process as to what the general shape of attitudes are, as to whether a treaty organization might be helpful in this regard.

Senator LAUTENBERG. Thank you, Mr. Chairman, for allowing me a little extension of my time.

Senator HEINZ. Senator Tsongas, I understand you had some questions; is that correct?

[No response.]

Senator HEINZ. I would like to address the issue of foreign availability briefly. I think, Secretary Olmer, you have said that you really put your first priority 2 years ago in trying to clean up the licensing backlog. Now you are really beginning to address the foreign availability. Even though we would like your operation to be all things to all people at all times, you were seeing where you had to set priorities.

I suppose it's fair to say you have really answered the question and described how you have dealt with licenses approved over the last several years on the basis of foreign availability. You have described how you have used foreign availability not so much for approving individual licenses but in affecting the Cocom list in a variety of ways.

VIOLATING U.S. REEXPORT LICENSING STRUCTURES

We have a serious problem which both you and Dr. Schneider have mentioned, which is, how do you get people to be a lot more careful, especially on reexporting of U.S. equipment and technology?

My question is, Would it be useful to have the power to deny exports to the United States for any company found to be violating either Cocom or U.S. reexport licensing strictures?

Mr. **Olmer**. Of course, a provision which would provide that authority is contained in your bill, Senator, about which the administration is still having discussions.

Senator **Heinz**. You will complete those discussions in about 10 days?

Mr. **Olmer**. The discussions will be completed a lot sooner. It will take a couple of days to write the bill that we propose submitting or an administration position, if it is not in the form of a bill.

But I think it deserves the most careful consideration. I suppose I would not want to see sweeping authority made available to be used frivolously.

Of course I don't think it would be in this administration, but I think that it could be a very useful instrument.

Senator **Heinz**. Now, my bill which you mentioned a moment ago does two things with respect to foreign availability. First, it requires quarterly reports on operation and improvement of our ability to assess foreign availability.

Second and most specifically, we put a greater burden of proof on the Government for the denial of a license in the face of strong credible evidence by the license applicant that foreign availability does exist, under section 2 of our bill.

Would you have any problems complying with that requirement?

Mr. **Olmer**. Well, the Department of Commerce might not have problems complying with that particular section, but if it were a national security case to a proscribed destination, the Defense Department would retain a veto over the export for whatever reason.

There is no way on God's Earth that anyone is ever going to be able to prove foreign availability beyond the shadow of a doubt. There will always be a question as to the adequacy of sources of supply and maintenance and spare parts, and whether it is of comparable or sufficient quality and quantity.

We've had lawyers arguing over the interpretations of the terms for the last several weeks, maybe months. The issue is not going to be resolved by a resort to legislative language, I'm afraid.

Senator **Heinz**. Mr. Perle, do you have a comment on that?

Mr. **Perle**. Yes, Senator Heinz. The question of foreign availability is a very difficult issue.

Ironically, the community of people best qualified to comment on foreign availability are those interested parties who are in the marketplace who know what the competition is offering in the market and who probably have a better idea than almost anyone else of what the competition is capable of producing, yet they are interested parties.

To find disinterested information on foreign availability is very difficult, we haven't done a very good job of it, but I have seldom seen a controversial license application in which the applicant did not argue that what he proposed to sell was a load of old rubbish available anywhere in the world.

Senator **Heinz**. How often was he right?

Mr. **Perle**. It's hard to tell how often he was right, but very frequently on close examination it turned out that the equipment was something the Soviets had sought year in and year out for the same period of time and had obviously not been able to pick up anywhere.

I can think of specific cases——

Senator **Heinz**. Specific cases won't tell us a lot. I'm trying to figure out what the batting average is here.

Mr. **Perle**. It's hard to say what the batting average is, but it's almost always an assertion of foreign availability that almost always requires close scrutiny, and it is not enough simply to observe the fact that a company is capable of manufacturing a product when the issue is a license for establishing a production facility, because there's a world of difference between an ability to produce on a limited scale and the ability to go in and transfer technology.

In the case I was going to mention, without identifying the companies involved, was one where there was a flat assertion of foreign availability. I happened to be in that country on a holiday and went to see the CEO of the company that was fingered as a potential competitor.

The man said to me in the confidence of that discussion that while he would deny it publicly, there was no way he could hope to offer what the American firm in question would be proposing to make available to the Soviet Union. They were a small, insignificant factor in the market.

In other circumstances, I'll give you more of the details because we went ahead and it turned out to be an egregious transfer.

Senator **Heinz**. Here's the question at which I'm really driving regarding section 2 of the Heinz bill, my bill, for we do put a greater burden of proof on the Government.

The question is, while that may put more of a burden on Secretary Olmer, does it pose an insurmountable national security problem for you?

Secretary Olmer said that notwithstanding what they decide, you have the right to veto.

Mr. **Perle**. The statutory language that required us to err on the side of what we might regard as undue risk is something we would prefer not to have.

Senator **Heinz**. The language is "reliable evidence, including scientific or physical examination, expert opinion based upon adequate factual information, or intelligence information."

Why doesn't that give you sufficient basis to do what you think you really need to do?

Mr. **Perle**. Let me be clear about one thing. That is precisely the sort of information that we look for and that we endeavor to establish, so I have no problem with saying that in arriving at the judgment we should have that kind of information.

TRANSFERRING BUSINESS ABROAD

There may be cases where there is simply no reliable information because the scope of the projected transaction is a unique event and whether there is a company somewhere else in the world that could go into the Soviet Union, build a facility, train people to operate it—that it may be very difficult to determine. And in cases like that where the technology is a sensitive one, I would, as I say, prefer to err on the side of caution.

In some cases, Senator, there is head-to-head competition between an American firm and an overseas firm, then it is readily apparent that if we deny a license it will have the effect of transferring the business abroad.

And I think that is something we ought not to do. I share entirely the concerns of the business community in that regard.

Mr. **OLMER**. Mr. Chairman, could I make a comment on that, if I may, please?

Two examples that are representative of the type of argument that rages, one, is the personal computer—the kind of personal computers that are increasingly available all over the world are being controlled, and we propose that they be decontrolled because of their wide foreign availability. That's a whole class, that's not a major fraction.

The second area is robotics. Now, to some just the name robotics sends them running to their union boss. To others who have some comprehension of what it means, it doesn't, by the term alone, frighten them away. We have recommended the decontrol of those kinds of robots which are less sophisticated than some numerically controlled machine tool equipment which was decontrolled. And a great deal of effort has gone into packaging these kinds of recommendations.

I can't tell you the many hours that I've spent in attempting to be persuasive. I referred earlier to things like blood analyzer machines, scientific instruments that are used for a variety of purposes unrelated to military purposes.

We have some 94 classes of those kinds of equipment which we are persuaded are widely available all over the world and do various things, and we have not achieved success.

Senator **HEINZ**. Ninety-four classes is how many products?

Mr. **OLMER**. Maybe 1,000.

Senator **HEINZ**. Now, what's the problem with moving ahead?

Mr. **OLMER**. Well, I suppose we need to get some better lawyers. We're not just sufficiently persuasive in the arguments that we made.

Senator **HEINZ**. Who are you trying to persuade?

Mr. **OLMER**. The Defense Department.

Mr. **PERLE**. Lionel's got this one wrong. The problem is not that he needs better lawyers. It's the problem, the burden of who is resolving this issue. What has happened is that early on there were very broad controls exerted on microprocessors embedded in other products.

The widespread use of microprocessors is a very recent phenomenon. They appear now in products this year where they didn't appear in last year's products or the year before, and we are now in the process of attempting to distinguish between embedded microprocessors in equipment that has military implications and we're on the verge of resolving that issue.

That seems to me the sort of issue that is always going to arise in trying to enact the broad guidelines given to us under any legislation.

END-PRODUCTS ITEM OF CONTENTION

Senator HEINZ. Mr. Perle, I'm a little confused, though. If our major focus ought to be on controlling the means of production of this technology—and I think there's broad agreement on that—it would seem without having given detailed examination to these 94 classes, that most of them have very little to do, as far as I understand it, with the production of high-technology components. They are, as I understand them, end-products including embedded microprocessors.

Why are these judged to be an item of contention?

Mr. PERLE. There are some end-products that have a military application in and of themselves. Take for example test equipment or electronic diagnostic equipment. This is an area that is vital to the production and development of military equipment, but it is also an end item. So it's a question of making judgments in specific cases.

Senator HEINZ. You're talking about dual use test equipment, but these aren't the urinalysis and blood analyzers, though? Are you talking about the urinalysis and blood analyzers?

Mr. PERLE. I don't believe that blood analyzers and urinalysis equipment ought to be controlled for national security reasons, and they are not so controlled.

Senator HEINZ. I think you just settled one class.

Mr. PERLE. There are dozens of these issues, and as I say, we are very close to resolving them.

Senator HEINZ. Mr. Olmer, would you care to comment on that?

Mr. OLMER. I think we've made a lot of progress, Mr. Chairman. [Laughter.]

At least as I'm able to measure progress over the last several months, that's an immense step forward.

I have a comment I'd like to make, not on the question of foreign availability, so I'll wait until you're through with that subject area.

It's a very brief comment, but it goes to something that Senator Garn said earlier.

Senator HEINZ. Maybe the Chair should instruct the witnesses to stay at the table until the other 93 classes are resolved. [Laughter.]

SHOULD DOD MAKE INITIAL DECISION ON HIGH-TECH ITEMS?

Very well, I have one question Senator Proxmire would like to ask. I have one before I ask that, which is this: Mr. Perle, the GAO in their report of May 26, 1982, suggested that DOD be mandated to make the initial recommendation on high-technology items which are destined for Communist country purchases.

They said that would eliminate as much as 30 days of the initial review at Commerce since it would be sent to DOD in any event.

Would that be a good idea? Would you be willing to endorse that recommendation?

I'd also like Mr. Olmer to comment on that.

Mr. **Perle**. Frankly, Senator, I was unaware of that recommendation and haven't given it much thought.

Senator **Heinz**. I won't ask you to respond to it at sight. Maybe you could respond for the record and I'll ask Secretary Olmer to do that too.

[Response to written questions from Senator Garn follows:]

WRITTEN RESPONSES FROM ASSISTANT SECRETARY OF DEFENSE RICHARD PERLE

Question. In testimony before this Committee last November, you stated the following: "If we fail and the pipeline is built we will have to redouble our efforts to contain the diffusion of advanced technology to the East that is certain to follow from the greatly increased hard currency the Soviets will find at their disposal." The pipeline is being built. Do you see any reason today to modify those remarks that you made last November?

Answer. Not at all. Despite the lifting of oil and gas technology sanctions against the Soviet Union, it does not diminish the fact that the acquired hard currency from oil and gas sales to Europe in the future will ease Soviet transfers of their own limited resources to supporting a military buildup. Billions of dollars will be available to Soviet planners to purchase needed technology from the West to strengthen key industrial sectors such as microelectronics which produces some bombs as well as TV sets. In this way the Kremlin can avoid the hard choice between guns and butter and have both. It also will bring on the effect of increased dependence on the part of the West Europeans for Soviet energy, thereby affecting political decisions in the future through political blackmail which threatens to cut off energy and possibly jeopardize the Defense alliance itself. There is a history of Soviet use of the energy weapon against members of the Soviet bloc. In fact, it was the Soviet Union which first suggested to OPEC members in the early 1970's to use their own oil as a weapon against the industrialized countries.

Question. I understand that the Commerce Department has failed to withdraw certain distribution licenses despite reports that the holders of the licenses have engaged in illegal diversion of exports. To your knowledge, how many of these incidents exist? Is this a major problem?

Answer. The answer to that question should more properly be posed to the Commerce Department, since it issues distribution licenses. Despite repeated requests in the past, Defense still is not allowed to review distribution licenses or scrutinize their multiple endusers, presumably because of Commerce's interpretation of 10(g) of the Act, which they say limits Defense review of exports only to proscribed countries. Distribution licenses are for Free-World, or so-called V and T countries, whose export requests Defense is not permitted to review, unless they are above a high, pre-determined level of performance for certain computer equipment. Admittedly, that does not occur too often.

Question. Would you describe the arrangements that the Defense Department currently has with the Department of Commerce for the review of East-West export license applications? Are these arrangements adequate for the Defense Department to fulfill its license review responsibilities under the Export Administration Act?

Answer. Only the most narrow arrangement with the Department of Commerce to allow Defense to review West-West cases now exists, although Defense has entered in an agreement, in principle, with Commerce for a "memorandum of understanding" to review certain West-West cases under particular categories. That MOU, however, has not yet been signed. For some time, Defense has had concern over exports to certain West-West countries, which serve as illegal reexport conduits to the Soviet bloc and to China. Defense interest is to review such exports and to use the MOU with Commerce as a working basis for that authority.

Question. The Defense Department has been criticized for inadequate organization and devotion of resources to its responsibilities under the Export Administration Act. How many full time positions are currently dedicated to export administration within the Department? What has been done during the past fiscal year to improve this activity at DoD?

Answer. Defense is in the process of expanding its staff to handle the review process in an effort to be more responsive to those who seek a license. We are now in the process of staff expansion in Policy and in Defense Research and Engineering to accommodate an anticipated growth in the number of cases to be considered for national security reasons. In this context, we are beginning to computerize domestic and CoCom cases and, in time, intend to have an interagency networking for case handling. We believe this will bring on greater improvement in expediting cases while improving on enforcement of those cases subject to controls.

Question. You are on record as being opposed to "cosmetic agreements" on arms control, considering them "in the long run fatal." You have argued that they reduce our apprehension of danger when little has really been done to reduce the danger. My concern is that we will go through this exercise of reviewing the Export Administration Act, talk about all the problems, and then only take action that is cosmetic at best in dealing with the problems of technology transfer. That is basically what we have been doing for over a decade, if not longer. How can we take any meaningful action that will get at the root of our problems, without dealing with the fatal flaws in our bureaucratic organization to stop technology transfer—and I am talking about the low structural priority given to export control and the contradictions involved in having it all centralized within the Commerce Department. Can any solution that fails to deal with these fundamental issues be anything but cosmetic?

Answer. I would agree that anything less than a solution to fundamental problems can be cosmetic. There is no question that the Act itself needs to be bolstered in certain areas and we are in the process of doing that. Even after our revisions are before Congress, there are some areas of concern which will still need to be addressed in an effort to bring about greater enforcements of our export control laws while keeping in mind legitimate U.S. and foreign trade competition. The problem does not necessarily lie with the Act, since it has built into it the necessary discretionary powers the President requires. The problem lies in its interpretation over the past decade and in the policy direction of previous administrations. While in theory Detente had certain enticements, the reality of exporting our technology to the USSR provided no political gains while U.S. technology and equipment were being diverted for military use. Up until a few years ago, there was a virtual hemorrhage of technology to the USSR, although efforts have been undertaken in this Administration to curb losses through domestic and multilateral enforcement efforts. The effect of that drain, over the past decade, and the cost in tens of billions of dollars in added defense money to maintain our technological lead, can't be recaptured.

Mr. OLMER. I don't think it's an idea with merit for the reason that there'd be another paper chase.

We have licensing offices that greatly assist in the Defense Department reducing the amount of time it has to spend. In considering a case, we have the relationship with the vendor. Frequently vendors make application without an ability—well, whether they have the ability or not, they fail to produce all of the information initially.

If it was sent over to the Pentagon, that would come back to the Defense Department, and—well, you've set up two channels to communicate with the business community and in the final analysis I think you'd rather increase the time than reduce it.

Senator HEINZ. One of the things that has many people concerned is the amount of time it takes to get licensing decisions. Can we look forward to more expeditious processing of these licenses in the future?

Mr. OLMER. I think we're doing a pretty good job and the Defense Department is doing an excellent job.

Senator HEINZ. But will we be able specifically to reduce the amount of time?

Mr. OLMER. I think so. I think we're continuing to increase it. Mr. Perle has devoted new resources——

Senator HEINZ. Continuing to reduce it, I think you mean.

Mr. OLMER. Continuing to reduce the amount of time it takes to reach these licensing decisions. We have, I think, an excellent record last year with the addition of the computer in the last couple of months in the Commerce Department and some creative efforts in the Defense Department in a similar area, the addition of new and better-trained people.

I'd like to say that in the last year of 80,000 licenses that represent my calculation, 64,600 were processed in less than 30 days, and less than 2,000 took 6 months.

Mr. PERLE. If I could offer one other statistic, Mr. Chairman. When we took over this responsibility, only 10 percent of the cases that came to the Department of Defense were turned around within 30 days. In the last 6-month period we were able to turn 42 percent of the cases around within 30 days. We are continuing to improve at that rate.

Senator HEINZ. Mr. Perle, this is a question that Senator Proxmire has suggested that I ask for him.

Mr. Gray of the National Machine Tool Builders, says that the Japanese and others continue to ship machine tools to Communist countries, despite the Cocom proscriptions, enabling the Japanese to be more competitive in the U.S. market, where they're increasing their market share.

NEED FOR JAPANESE COOPERATION

What do you say to that? Do the controls make sense on U.S. exporters, when the Japanese will make the sale? How can we get the Japanese to cooperate?

Mr. PERLE. I think you have made proposals that Lionel was reflecting on a moment ago that would be a very powerful club in the closet. If the President had the authority to terminate imports from a Japanese machine tool building company which violated the regulations and, in violation of those regulations, sold machine tools to the Soviet Union, the company would have to think twice before putting at risk the American market, which is much larger for the Japanese machine tool building industry.

Senator HEINZ. So with that kind of authority, you think we can break the vicious circle of, if we don't sell, the Japanese or somebody else will sell to the U.S.S.R. They get the sale and our industrial base is undermined, while the Soviets have their technological base enhanced. Do you think that kind of authority will really make a difference?

Mr. PERLE. I believe it would. This is a personal view. There's not yet an administration view on this. The alternative is to submit to the lowest common denominator, because there is a violator somewhere in the world, essentially disestablish controls. That, I think, would be irresponsible. So we've got to do the other thing and improve our ability to persuade the others.

Senator HEINZ. The other question, I guess, is why should we continue to provide the Japanese, or for that matter, Western Europe with a costly defense umbrella, if they're determined to undermine our national security by selling or permitting the sale of this kind of sensitive technology to the Soviet Union?

Mr. PERLE. Because that umbrella keeps us dry as well, Senator. I think that we have to continue to try to persuade them that we're all under the same umbrella, and if they put holes in it, we're all going to get wet.

Senator HEINZ. We're holding up more and more of the umbrella all by ourselves.

Mr. PERLE. The separate issue of the sharing of the defense burden within the Alliance will also require some attention. That isn't as big as it sometimes seems to be. I think we're making progress. I have to say that it is only in the last couple years that a concerted effort has been made to go to the allies to lay out the sort of elements we were discussing in the closed session this morning.

In principle, there is broad agreement, but they're taking a very skeptical attitude. They're saying, "Show us concrete results of profligate transfers." We are doing so, and they're gradually coming around.

It would help if we had additional leverage to persuade them.

Senator HEINZ. I must say the descriptions that I've heard today of the Cocom process, from Dr. Schneider and others, do remind me a little bit of our trade negotiations with the Japanese. We know how successful they've been.

I have one last question for Secretary Olmer, who I won't ask to respond to that, but this is not on the subject of the Export Administration Act, it's on a different subject.

JUMPING AHEAD OF THE LINE TREATMENT

I note that there's been a request under section 736(c) of the Trade Agreements Act of 1979 for a waiver of deposit of estimated duties in the case of seamless steel pipes and tubes from Japan. That's the Sumitomo case. I also understand that a tentative decision may have been made to approve that request. Since I understand that none of the required information has been presented yet, and since the Commerce Department is far behind in its regular section 751 reviews, I'm surprised you might be considering granting such a request, let alone considering it, in view of many other factors, not the least of which is unemployment in the steel industry.

Let me ask you this: Is my information correct?

Mr. OLMER. Your information is partially correct, Mr. Chairman, correct to the extent that I have instructed our Import Administration to indicate to the respondents in that case, the Sumitomo Corp., that we would be willing to receive data that they were free to provide, to enable us to recalculate the deposit rate. It is an ordinary course of business procedure. Indeed, we have done this in the last year or so to other respondents. It is in recognition of the fact that the period of the investigation sometimes has transpired well before the period of the deposit rate. We're talking about a difference of well over a year or so.

If the respondent is able to gather documentation and verify documentation, which we will, ourselves, verify, to demonstrate the need to rejigger the deposit rate, we will do that, but we haven't suspended anything yet.

Senator HEINZ. Have you made a commitment, though, upon the receipt of that information, to go ahead and do that on an expedited basis?

Mr. OLMER. No, to evaluate it, to consider it, and if we find it meritorious, then we'll do it, but no commitment's been made to accept.

Senator HEINZ. My question wasn't as to whether you have decided to accept it, my question is whether you're jumping it ahead of other kinds of requirements.

Mr. PERLE. No. It's not getting head of the line treatment. It's a process that's available to anyone, and we'll do it in accordance with the statutory procedures and nothing more than that.

Senator HEINZ. Isn't it true that you're pretty far behind in your section 751 reviews?

Mr. OLMER. Those are annual reviews and, yes, we are far behind in annual reviews, but there is a procedure that you have identified as 736(c), which allows a petitioner to come in for certain special circumstances which, if they feel, warrant an accelerated review, we'll do it. We've indicated a willingness to do it, but it doesn't mean that we're going to jump that petitioner, that respondent ahead of anybody else.

Senator HEINZ. Secretary Olmer, thank you.

I thank Senator Tsongas for allowing me to impose on his time, because he's going to testify shortly.

"BASE CANARD"

Mr. OLMER. I wonder, Senator, it's not an appropriate closing statement or anything, but some information came to me that enabled me to use the term that I dearly love and rarely have the opportunity to use, called base canard. It refers to an accusation against the Department of Commerce's export licensing responsibilities in the last couple of weeks, involving a case to a European government.

I have just received information in the case that Senator Garn referred to, in which we authorized the transfer of equipment to Switzerland, when that equipment was sold to the Soviet Union, that that was evidence of our dereliction of duty. I just want to say that that was a case demonstrating not only resolve and discipline on the part of the Department of Commerce, but of ultimately the impossibility of guarantees. The fact is that the application was held up for a lengthy period of time, I wonder even if beyond the statutory limits that you certify we must reduce, pending our investigation of the end user.

When we got information on that end user in Switzerland, it led us to be somewhat suspicious, and so we solicited a guarantee of the Swiss Government. We received it. We received their compliance with the provisions of that guarantee process. We got a receipt from the Government authorities after the equipment was received, and then 1 month later, an acknowledgement that something happened, and it slipped through their fingers.

Now I know of no way that, short of providing a person to sit on top of that piece of equipment that we're going to guarantee that it never goes beyond the source for which it was intended. The identified source was a legitimate source. The transfer was a legitimate transfer. The guarantees we received were more than reasonable.

So it leads me to believe that perhaps some of the sources of bad stories about the Commerce Department might themselves be investigated.

Senator HEINZ. Was this the one that was stolen off the loading dock?

Mr. OLMER. I doubt it very much. It was delivered to the consignee, inspected by government officials in Europe and identified as the proper piece of equipment, with proper documentation, and it was given to a proper recipient, and a month later it disappeared.

Senator HEINZ. Disappeared. You mean it was stolen?

Mr. OLMER. It may have been stolen. It's an embarrassment to the foreign government who had acted responsibly.

Senator HEINZ. It should be an embarrassment to the foreign government.

Mr. OLMER. And it was. I dare say, we have a few on our record.

Senator HEINZ. Mr. Perle, do you know anything about this case?

Mr. PERLE. I just wanted to say that as against the embarrassment of the foreign government, on the ability to stop import from the company involved, you'd be better off if you had the ability to stop the imports.

Senator HEINZ. That point is well noted.

Gentlemen, thank you very much. We appreciate your being here.

[Response to written questions of Senator Garn follows:]

RESPONSE TO QUESTIONS SUBMITTED BY SENATOR GARN FROM LIONEL OLMER

QUESTION NO. 1:

Has the Office of Export Administration or the Office of Export Enforcement undertaken any audits of distribution licenses in recent years? If so, would you describe the nature of the audits, how many were conducted during FY'83, which licenses were audited, and what were the results and follow-up? If not, why not?

ANSWER:

When this Administration took office there was only one full-time person responsible for the handling of distribution licenses, and audits of those licenses, given the paucity of personnel, were not possible. In November of 1982, through internal reprogramming of resources within ITA, we added three additional staff to the distribution license program and plan to reinstitute audits in the near future.

In addition we have also established an internal working group to conduct a comprehensive assessment of the distribution license process toward identifying any problems in the distribution license program and proposing specific resolutions for those problems. We also have underway a major effort to computerize all of the distribution licensing information including all consignees and amendments to the distribution licenses on our new Export Administration computer. We expect the major part of our computerization effort to be completed within 60 days.

In August of 1982, we also communicated to Defense, State and the Department of Energy some proposals for identifying sensitive technologies and commodities which would no longer be eligible for distribution licenses. We are continuing to analyze additional technologies and commodities that might also be excluded from distribution license eligibility.

Distribution licenses are an important mechanism for American companies with extensive business overseas. We presently have 650 distribution licenses with a total of 19,000 consignees. The distribution license enables a company to keep from submitting individual validated licenses when their business is such that there are a large number of repeat shipments to a large number of consignees throughout the Free World. For example, one large electronics firm would require 17,000 individual validated licenses a year if the distribution license mechanism were not in place.

Again, our ongoing effort to computerize the distribution license information and to assess any problems or weaknesses in the system should be completed shortly.

QUESTION NO. 2:

There are reportedly more than 50 KGB officers and at least 25 GRU agents assigned to the Soviet Consulate in San Francisco in order to be close to the nearby Silicon Valley. Would you describe the resources of the Office of Export Enforcement in the San Francisco area.

ANSWER:

The San Francisco Field Office of the Office of Export Enforcement (OEE) currently has ten experienced criminal investigators assigned to perform enforcement functions pursuant to the Export Administration Act (Act) and the Export Administration Regulations (EAR); this is their sole mission. Two additional investigators are being recruited. In addition to the permanent staff, this field office may call on the assistance of additional criminal investigators from the Office of Export Enforcement's Washington, D.C., headquarters to meet operational needs that may arise from time to time.

OEE special agents also conduct joint investigations with the FBI and the Customs Service to the extent such investigations pertain to suspected violations of the Act or the EAR.

QUESTION NO. 3:

Some have said that there is currently a hemorrhage of technology going to the Soviets rather than just a leak. Others have suggested that the problem is really very small and that even if there is a leak it is a slow leak. You have access to the intelligence information and have had now over two years of experience with this whole problem. How would you describe the rate of transfer to the Soviet bloc? Is it indeed a "hemorrhage"?

ANSWER:

The flow of high technology products to the Warsaw Pact must be termed a "hemorrhage", rather than a mere leak. The CIA's unclassified version of its report, "Soviet Acquisition of Western Technology", verified the fact that the USSR's acquisition efforts have been not only massive, but have been planned at the very highest levels of government. The commercial sector, which generally is not adequately protected against penetration by hostile intelligence services, is being targeted for industrial espionage and theft. This has become one of the most productive areas for Soviet and East European acquisition of Western technology.

QUESTION NO. 4:

Until just recently, there had been no ministerial-level meeting of COCOM for over twenty years, although problems with multilateral cooperation in export control has been a continual problem over the years. To your knowledge, or according to Department records, during those two-and-a-half decades, did any high level official at the Commerce Department make a formal request for ministerial meetings of COCOM to be held?

ANSWER:

Over the years, there have been many discussions with COCOM members on COCOM control issues. Frequent bilateral meetings were held, in which technical and policy views were exchanged at a working level.

Whereas the desirability of high level consultations may have been discussed in the Economic Defense Advisory Committee (EDAC) structure, there are no Commerce records of such discussions or of requests for any COCOM ministerial meetings.

QUESTION NO. 5:

Commerce Department officials have stated that Foreign Commercial Service Officers may be used to assist in foreign investigations of export control enforcement cases. Yet, the primary mission of FCS officers is to promote U.S. trade abroad. How can they be credible in promoting U.S. trade abroad if they are also being used for enforcement purposes? How can they be trusted by foreign business contracts?

ANSWER:

FCS personnel can assist in foreign investigations by helping obtain information on the reputation of foreign purchasers and end-users of strategic U.S.-origin technology. Such information is needed in making informed licensing decisions.

Reputable foreign firms generally realize that cooperation with FCS personnel will help facilitate trade, rather than restrict it. Accordingly, the majority of reputable foreign firms cooperate in a timely and thorough manner with FCS personnel.

QUESTION NO. 6:

A U.S. Mission was recently sent to the COCOM countries to discuss the international export control enforcement efforts. This Mission was headed, I understand, by the Commerce Department and was initiated by the Commerce Department as well, with assistance from the State Department. Would you describe for the Subcommittee any memorandum of understanding that you had at the time of this Mission with other U.S. enforcement agencies that would give you a basis for pursuing negotiations with foreign governments on the technicalities of international export enforcement? For example, who did you tell the foreign governments would be the lead U.S. agency for directing our foreign investigations, and on what basis was this agency named?

ANSWER:

The bilateral discussions to which you refer were aimed at improving the mutual efforts of COCOM countries in controlling illegal diversion of high technology commodities and technical data to proscribed destinations. They were the result of three years of preparatory work primarily by the Departments of State and Commerce. In view of the primary investigative and enforcement role accorded to the Commerce Department under the Export Administration Act, it was fitting that a senior official of the Department chair the *ad hoc* interagency group that prepared for the talks, and that he lead the American delegation in the round of bilateral discussions. No specific representations were made to any foreign officials regarding the designation of "a lead

U.S. agency" for the conduct of the overseas aspects of investigations.

Further, from the inception of the interagency group on COCOM bilaterals on enforcement, representatives of U.S. Customs, FBI, State Department and Justice Department, attended the planning meetings which were held to prepare the U.S. delegation visits to various COCOM countries.

The bilateral discussions did not involve "negotiations" with foreign governments on the technicalities of international export enforcement, but rather focused on improving the mutual efforts of the United States and its COCOM allies to control illegal diversion of high technology commodities and technical data to proscribed destinations. Accordingly, no memorandum of understanding with U.S. enforcement agencies was necessary for Commerce and the other agencies involved in the bilateral discussions to engage in a dialogue on these enforcement issues with various COCOM members.

The Department of Commerce will continue to conduct its key responsibilities under the Export Administration Act in the spirit of mutual cooperation with other government agencies that is necessary to attain the best possible enforcement results.

QUESTION NO. 7:

Why were these meetings held outside of the COCOM structure?

ANSWER:

These meetings were not held outside of the COCOM structure, but were an integral part of our participation in COCOM. They represent one example of the ongoing efforts by the Administration to improve the efficacy of COCOM. They were aimed at improving the mutual efforts of this country and its COCOM Allies to control the illegal diversion of high technology commodities and technical data to proscribed destinations.

Commerce and certain other departments/agencies which have responsibilities under the Export Administration Act traditionally meet on a bilateral basis with COCOM countries in advance of scheduled COCOM high level or subcommittee meetings. These meetings serve to seek support for positions the U.S. government expects to take or issues our government intends to raise at such high level or subcommittee meetings. This practice was followed prior to the January 1982 High Level Meeting and prior to the May 1982 COCOM Subcommittee meeting on COCOM harmonization and enforcement. Such bilateral meetings are part of our government's participation in the COCOM community.

QUESTION NO. 8:

Is the Commerce Department satisfied that commercial considerations are given full and appropriate consideration by the State Department in its licensing decisions pursuant to the Arms Export Control Act?

ANSWER:

Arms and munitions exports are not normally considered on the basis of economic considerations. Therefore, the Department of Commerce would not be involved in such decisions. However, Commerce can provide technical information if requested.

Senator HEINZ. Our next witness, whom we commend for his patience is Senator Tsongas.

STATEMENT OF PAUL E. TSONGAS, U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator HEINZ. Let me apologize to Senator Tsongas. I was not aware that he had a month or so earlier requested to testify before the committee today. I'm sure through some kind of oversight his name failed to appear on the witness list, and I want particularly to apologize to him.

Senator Tsongas, you are welcome to this committee.

Senator TSONGAS. Mr. Chairman, I have spent more time on this committee today than I did when I was on the committee. It's good to be back.

I had a prepared statement I was going to read. I have copies at the desk there, and if anybody is still in the audience when I finish speaking, they can get a copy of that.

There are specifics in my testimony which I'm sure your staff will read and maybe are already aware of them, some of them, by the way, paralleling the recommendations in your bill. But let me just comment that after what has happened this morning, the issue is not specifics, the issue is attitude. We can't resolve the philosophical question, I think the mechanics can pretty much take care of themselves.

I find the Defense Department's testimony intriguing. I serve, as you know, on the Foreign Relations Committee. The testimony before that committee is that the Soviets are ahead of the United States in every area of military weaponry. Then they come in here and say that if we're not careful, they might catch up with us.

MINDLESS DECISIONMAKING

Now I've had some experience, as you have, at competition in my lifetime. This may be the only case in a two-man race, where the person who was second was worrying about being overtaken. You can't have it both ways. Either we're behind or we're ahead, but we cannot be simultaneously behind and ahead, which is the argument that has been made. It is also, by the way, the same argument made to us by those who gave us the Soviet pipeline decision, and there was some reference to mindless decisionmaking.

If the Soviet pipeline decision is not a classic issue of mindless decisionmaking, I don't know what is. The same people made the argument against rationale export controls, and these are the same people who fault Secretary Shultz in his attempt to reverse that pipeline decision.

A few more of those, and Uncle Sam's going to be walking around with his shoes full of bullet holes, to the advantage of the Soviets.

Second, the Kama River project. Talk about the reference made to "base canards," the Kama River project is an old red herring, literally, and to march that out, I think, is an insult to the committee and to the Congress. The greatest threat of the Kama River project would have been if the Kama River project had been denied and they went to the Japanese for trucks.

Senator HEINZ. Actually, Fiat was the contractor.

Senator TSONGAS. That's right. I'd be far more worried about the Soviet capability in Afghanistan with Japanese equipment than I would be with Fiat and U.S. equipment. That would really have strengthened their capability. And I think it was in our national interest they came to us and the Italians rather than going to the Japanese.

Another example of that kind of attitude is the buoy they brought in here, that somehow that would shock the committee into sensitivity about what the Soviets were doing.

It never ceases to amaze me, since we do the same thing, that somehow they can assume that we would react in such a simplistic way.

Let me give you some of the examples of the concerns that we've had. I've been involved with the project of trying to sell Boeing 767's to the Ethiopian Airlines. That was held up because of a laser gyroscope which cannot be reverse-engineered, which is on the Airbus competitor of the 767. And the argument was made by the Defense Department that it could not be given to Ethiopia, since they have ties with the Soviets, but the Ethiopians went on to buy the Airbus and get the same technology, neither of which can be reverse engineered. A major loss would have occurred, had that decision been sustained. And I just think it's an example of what we're living with.

One of the more advanced technologies is in a toy called Speak 'n' Spell. I don't know if you're aware of that.

Senator HEINZ. It's almost as popular on the other side as the Kama River truck plant.

Senator TSONGAS. Well, I'm proposing, as part of the Act, that we set up armed guards at every Toys R Us store in our area to make sure that no Soviet agent sneaks into the toy store and buys Speak 'n' Spell.

The final point I would make, and the specifics I would leave either to your questions——

Senator HEINZ. If you're not careful that's going to end up in the Democratic jobs bill. [Laughter.]

Senator TSONGAS. Well, it's better than most of the things that are in there. [Laughter.]

The final, and I think the obvious point is that a lot of things in this country are stamped "Made in Japan." So is our policy on export controls. The Japanese must be delighted by all of this.

What we're engaged in is unilateral disarmament in one particular sphere. Unless you have multilateral decisionmaking, all we're doing in essence is destroying the U.S. reputation for reliability and credibility.

That only plays into the hands of the Japanese, the Germans, the Swiss, the French, and everyone else. I think your initiative on foreign availability is very important. And I would hope we'd get away from feel-good legislation, and ask very realistic pragmatic questions about how the real world operates, and how we exist within it.

And I would hope at the end of all this discussion, we would make the Defense Department tell us once and for all, are we ahead, or are we behind?

I think that would be a major step forward in understanding where we all are. The specifics I leave to my testimony, much of it is their initiatives.

And if you have any questions, I'll be glad to answer them.

[Complete statement follows:]

Testimony of Senator Paul Tsongas

March 2, 1983

Before the International Finance and Monetary Policy Subcommittee
of the Senate Committee on Banking, Housing and Urban Affairs

Mr. Chairman and Members of the Committee:

I appreciate the opportunity you have given me today to comment on the conduct of U.S. export control policy as it is pursued under the Export Administration Act, now before the Committee for reauthorization.

The debate over reauthorization occurs at a time when concern runs deep over twin goals of the Act: to provide protection for national security and the conduct of foreign policy, and to encourage exports by U.S. business. I don't believe this occassion should be treated as an opportunity to pursue one goal at the expense of the other. The proposals set forth by Members of the Committee, in particular Senator Heinz and Senator Garn, demonstrate to me that there are many constructive changes that can be made to improve efforts toward both goals. I would like to commend you for your efforts in that direction.

I wanted to testify before you today to convey a message that I have received from small businesses and large firms all across Massachusetts. It is a simple message of frustration. Current export control policy is frustrating the efforts of many businesses to compete in growing international markets. We are dulling our competitive edge, and it is not clear that we are serving any other public purpose by so doing.

For example, current export control procedures are effective in slowing the exports of toys like Speak 'n' Spell, a learning game that can be bought in any toy store.

They remain inadequate, however, to deal with the serious national security threats documented by this Committee, Senator Nunn's special investigation, and others.

I believe we can both improve our efforts to restrict the flow of strategic technological information to unfriendly nations and reduce barriers to exports. This can be accomplished by streamlining our export control efforts to meet newly emerging economic circumstances. For example,

(1) Technology exports are growing in volume and economic significance. In the third quarter of 1982, the U.S. registered a $2.5 billion trade deficit for goods and services, the worst performance in four years. Only technology products made a positive contribution to the manufacturing trade account. Technology exports will increasingly be the source of economic growth opportunities. This means a greater number of products that will require review, and a greater share of our economic activity that will be dependent on expeditious review. We must find a way to shift our enforcement efforts from specific products to generic technologies that may have sensitive military applications. Otherwise, frustration by all parties with export controls is bound to grow.

(2) International Competition is Growing in Controlled Product Areas. Greater competition abroad raises the concern by U.S. businesses over delays in processing export requests. A delay here is a competitive plus for an overseas firm. The specter of growing international competition fueled the consternation of U.S. firms over the damage done to their reputation as reliable suppliers as a result of the ill-advised pipeline sanctions of last year.

Greater competition from abroad also frustrates efforts to impose effective controls. Greater attention must be paid to the question of foreign availability for products under export control here. Increasingly, we must recognize that only multilateral action can produce effective export control. Unilateral efforts are doomed to adding only additional frustration.

(3) Technological Change is Growing and the Frontier is Increasingly a Commercial One.

Testimony by one of my constituent firms here today will demonstrate that we currently continue to treat technology that can be purchased at any Radio Shack as subject to control. We need to review technologies requiring export monitoring, and we need a process with the capability to conduct such reviews more frequently and expeditiously.

Lastly, the rapid commercialization of new technologies and the growing markets for such products has resulted in significant technological advances being initiated by commercial rather than military applications. Increasingly, technological advances flow from the commercial sector to the military. This frustrates export control efforts. Any effort to expand export controls over commercial technology may damage the long-term competitiveness of our industry and slow the rate of technological advance. This in turn can only harm our capability for defense.

It is my hope that the final effort of this Committee will give a clear mandate to whoever may be responsible for administering our export controls to review those products and technologies currently covered with these new economic circumstances in mind. Such a review could dramatically streamline current enforcement efforts. There is ample evidence that such a streamlining is very necessary. Of the 76,677 export licenses reviewed in FY82, 98.8% were granted export licenses. Too much administrative time is being consumed on routine requests. Even the narrowly drawn militarily critical technologies list covers over 700 pages. The National Academies of Science and Engineering have endorsed the need to radically reduce the overall size of the list to concentrate only on technologies that are truly critical to national security.

I would like to conclude by mentioning a few specific measures that I believe can contribute significantly to an effort to streamline our current control mechanism:

(1) The development of a comprehensive operations license which would allow multiple exports to approved recipients over a specified period would encourage review of technologies rather than specific products. This would also dramatically alleviate the compliance burden for both business and government.

(2) Simply remove controls on any good for which a significant number of license requests have been reviewed, and for which none have been denied during a given year. This would focus enforcement efforts on those areas where the need is greatest.

(3) I commend calls for a quarterly review of Federal efforts to assess foreign availability for controlled products.

(4) Export Controls should not be imposed solely on the basis that a product contains a microprocessor, or any imbedded technology that does not carry a national security concern. Many firms in Massachusetts engaged in robotics for industry or instrumentation have found their products stopped at the wharves because they had inserted microprocessors in their machinery that they could purchase at a hobby shop. Export control administration must keep up with the pace of technological change if it is to avoid acting as a brake on such development.

I believe that a streamlined export control adminstration would allow both improved protection of vital national security interests and reduced barriers to trade. I will do everything I can to support the Committee's efforts toward that end.

Thank you.

Senator HEINZ. Just one. First of all, I want to commend you on some very eloquent testimony. In terms——

Senator TSONGAS. You mean what I said, or what I gave in the written statement?

Senator HEINZ. I didn't read what you said, but I heard what you said. What I wanted to ask you about is whether you have any specific suggestions to improve the legislation, change it in any way.

SUGGESTION TO IMPROVE LEGISLATION

Senator TSONGAS. Well, one of the ideas, the basic thrust of what we're saying is in essence, put the burden of proof on the Commerce Department—why the technology should not be allowed to be exported.

I had introduced an amendment some 2 years ago, when Richard Perle was still working with Scoop Jackson, on indexing, so that you would in essence index technologies over time, so that you'd have no capacity for just adding it to the list.

Some of that passed. Some of it did not. That was the basic approach. Another idea, for example, is to have a regulation whereby if the technology is accepted within the year for export, that would automatically take it off the control list, unless there's a showing why it should stay on the list. The presumption, therefore, is that it be removed from the list; not that it just stay on there for another review and another review, and another review.

Part of the foreign availability report that you had referred to is another one that we would suggest. Almost a similar example, is nuclear reactors. One of the ideas that has been talked about is a kind of cookie-cutter qualification of particular reactors. You build one reactor. It's certified; then you can build the others without having to go through the same process.

There would be certain companies where they would be allowed a certain export capability within a particular technology, without having to go through recertification every time.

A variation of that technology should be introduced. The question is not the mechanics; the question is whether. There are a lot of ideas out there. Most of the associations have testified that they are willing to do some of these, and give you others.

The question is whether we're committed to a viable policy given the condition of the Nation's economy and the need to export. We need to be sensitive to national security interests, but not be paranoid.

Once we arrive at that philosophy, the mechanics in this case, I think, pretty much take care of themselves

Senator HEINZ. Senator Tsongas, thank you very much. We appreciate your patience.

Senator TSONGAS. I would also commend the chairman for his pragmatism. Even though I had hoped to rejoin this committee, I must say that Senator Lautenberg is going to be a very valuable addition in these deliberations.

Senator HEINZ. He is very faithful in his attendance.

Senator TSONGAS. A characteristic I see shared.

Senator HEINZ. Much more so than some people, Senator Tsongas. Thank you.

May I ask our last group of witnesses, if they're still here, to join us? Mr. Gerald Gleason, Mr. James Gray, Mr. Vico Henriques, Mr. Allen Frischkorn, Mr. J. A. DeRose.

STATEMENT OF GERALD GLEASON, SCIENTIFIC APPARATUS MAKERS ASSOCIATION, VICE PRESIDENT OF THE FOXBORO CO., FOXBORO, MASS., ACCOMPANIED BY JAMES A. GRAY, PRESIDENT, NATIONAL MACHINE TOOL BUILDERS ASSOCIATION; VICO HENRIQUES, PRESIDENT, COMPUTER & BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION; ALLEN R. FRISCHKORN, ELECTRONIC INDUSTRIES ASSOCIATION, ASSISTANT VICE PRESIDENT, GTE CORP.; AND J. A. DE ROSE, SEMICONDUCTORS INDUSTRIES ASSOCIATION, PROGRAM DIRECTOR OF PUBLIC AFFAIRS, IBM

Senator HEINZ. Gentlemen, we welcome you. We apologize we kept you waiting longer than we intended. Hopefully, we've learned a lot from the administration. They still have a few things we don't fully agree on yet, between themselves.

Mr. Gleason, would you proceed? Your're the first witness on the panel.

Mr. GLEASON. Mr. Chairman, if you will, Mr. Henriques will give the overview for the panel.

Senator HEINZ. Fine. Mr. Henriques?

VICO HENRIQUES, PRESIDENT, COMPUTER & BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION, WASHINGTON, D.C.

Mr. HENRIQUES. Thank you, Mr. Chairman. I am Vico Henriques, president of the Computer & Business Equipment Manufacturers Association.

We will represent 41 companies, and have, during the past calendar year, 1982, contributed to a positive trade surplus of $6.5 billion.

At the outset of our remarks, we'd like to compliment you and the committee for holding these hearings. Also for introducing S. 397. We note that the related bills introduced by Senator Garn and by Senator Nunn would seem to improve export administration laws.

We believe these bills will promote useful discussion of the need to extend and amend the Export Administration Act of 1979.

What I would like to do at this point is to provide an overview and a summary of our statement, and introduce the subjects which will be discussed later.

Our statement, which I would appreciate being placed in the hearing record.

Senator HEINZ. Without objection, your full statement and the statement of all the panel members will be placed in the record.

Mr. HENRIQUES. Thank you, Mr. Chairman. Our statement has been endorsed by the Business Roundtable, as well as the associations here present, in its general content and construct.

NEED FOR NATIONAL SECURITY EXPORT CONTROLS

We recognize the need for and support the national security export controls of militarily critical products, and the technical data or know-how that facilitates their production.

We believe that this goal can be accomplished by such measures as concentrating enforcement efforts on products and technical data that are truly militarily critical, improving multilateral controls, encouraging the voluntary compliance and cooperation between the U.S. Government and exporters.

And additionally, we think it's essential that there be effective implementation of the foreign availability provisions of the act.

We stress that only effective multilateral export controls, focusing on East-West trade can promote our national security interests.

We welcome S. 397's recognition that the United States must develop an effective and workable regime to control transfers of militarily critical technology.

And in the written statement, we see the appropriate framework for such a regime, and provide details of the validated licensing that would be required under the comprehensive operation of the license, which will be discussed later.

I would like to summarize both the general principles and recommendations which were contained in our statement. First of all, we believe that it's essential to establish effective export controls on goods, and more significantly, technologies from all sources which can make a direct and significant contribution to the military capabilities of specific adversary countries.

We believe this goal can be achieved through the improved implementation of controls, rather than expending the scope on export control authority.

Militarily critical goods and technologies are available in most Western industrial countries, and in many advanced developing countries, such as Israel, Brazil, and Argentina.

The U.S. Government must seek multilateral agreements with our allies, and bilateral agreements with nonadversary countries, as the only effective means to deny access to such goods and technologies by adversary countries.

The goal of effective regulation under national security export controls is to deny adversary countries access to militarily critical goods and technologies through legitimate commercial channels.

And to force such countries to employ illegal means when they attempt to acquire such goods and technologies. This goal can only be achieved through measures which promote voluntary compliance by responsible companies, to the maximum extent possible.

It may be necessary to improve national security export controls to deny access to truly militarily critical technologies, keystone equipment, and keystone materials.

However, many technologies developed for commercial use are more advanced than technologies currently used for military purposes.

Export control measures which put U.S. high-technology companies at a competitive disadvantage to foreign companies in Western markets, adversely affect our national security in the long run, and must be avoided to the maximum extent possible.

In order to improve national security export controls of critical technologies, keystone equipment, and materials, it is essential that the items on the militarily critical technologies lists be limited to those which can make a direct and significant contribution to the military capabilities of specific adversary countries.

Effective enforcement is possible only if enforcement activities focus on a limited group of truly critical items.

Our recommendations are summarized as the EAA extension must direct the administration to continue to intensify its efforts with the Cocom and other governments, to negotiate effective multilateral controls.

The acts prohibit the Department of Commerce from requiring a national security validated license for exports of goods or technologies, other than the critical technologies, equipment, and materials, subject to multilateral controls to Cocom countries.

The act should prohibit the Department of Commerce from requiring U.S. national security reexport controls on goods and technologies exported to Cocom countries, and subsequently proposed for reexport to adversary countries and to other Cocom countries.

When such goods and technologies are subject to multilateral security controls, the act should require the Department of Commerce to impose less stringent national security licensing requirements on exports of goods and technologies to nonadversary, non-Cocom countries, which agree bilaterally with the U.S. Government to impose national security controls on exports and reexports which are similar to or identical with Cocom controls.

We should prohibit imposition of unilateral national security export controls on goods and technologies which are available from foreign sources, except in extraordinary circumstances.

Finally, we should require national security export controls imposed unilaterally by the U.S. Government on goods and technologies to terminate 1 year after the date on which they're imposed. If such goods or technologies are available from foreign sources. We should prohibit extensional renewal of the national security controls on such goods and technologies, unless Cocom countries agree to multilateral controls for such goods and technologies.

That, Mr. Chairman, summarizes the positions that we've espoused in our written statement. In the interest of time, I would like to stop now, and turn to other members on the panel.

Unless you wish to ask questions.

[The complete statement and response to written questions follow:]

STATEMENT OF COMPUTER AND BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION

I. INTRODUCTION

Mr. Chairman and members of the Subcommittee, my name is Vico Henriques, and I am President of the Computer and Business Equipment Manufacturers Association (CBEMA) which represents 41 companies. During 1982, CBEMA member companies had revenues in excess of $75 billion, employed more than one million people worldwide, and had a trade surplus of $6.5 billion. Because the CBEMA companies are so involved in high technology trade and investment, we welcome the opportunity to comment on the bills now pending before the Congress relating to the renewal and amendment of the Export Administration Act (EAA).

At the outset, we would like to compliment the Chairman of the Subcommittee, Senator Heinz, for holding this hearing on the important subject of export administration, and for introducing S. 397. We also note other related bills that will be addressed in this hearing, including S. 434 introduced by Senator Garn, that would unify the export administration functions within an Office of Strategic Trade, and S. 407, introduced by Senator Nunn, that seeks to improve enforcement of export administration laws. We believe these bills will promote useful discussion of the need to extend and to amend the Export Administration Act of 1979 which, as you know, expires on September 30, 1983.

CBEMA's statement will focus on issues related to national security controls and the administration of these controls.

At this point I would like to provide an overview and summary of the full statement that CBEMA offers for the record. CBEMA recognizes the need for and supports the national security export controls on militarily critical products and the technical data or "know-how" that facilitates their production. As we will explain, we believe that this goal can be accomplished by such measures as concentrating enforcement efforts on products and technical data that are truly militarily critical, improving multilateral controls, and encouraging voluntary compliance and cooperation between the U.S. Government and U.S. exporters.

CBEMA emphasizes that the objective of national security export controls is to prevent the Soviet Union and other adversary countries from acquiring from any source militarily critical goods and technologies they do not possess. Therefore, it is essential that there be effective implementation of the foreign availability provisions of the Act. Moreover, we stress that only effective multilateral export controls focusing on East-West trade, can promote our national security interests. We welcome S. 397's recognition that the United States must develop an effective and workable regime to control transfers of militarily critical technologies. We suggest an appropriate framework for such a regime and provide details of the new validated license it would require, the "Comprehensive Operations License."

CBEMA also recognizes that cooperation and continuing dialogue between the U.S. Government and private industry are essential to effective controls and to achieve national security objectives. According to the Senate Permanent Subcommittee on Investigations, "[m]assive Soviet efforts to obtain U.S. technological resources can be countered only through vigorous government and law enforcement efforts, bolstered by the strong support of America's high technology industries."*

In the interest of participating in this effort, it is a pleasure to appear before you today. With your permission, Mr. Chairman, I will submit our detailed written statement for the record.

II. History

In order for Congress to review legislation for export controls in the 1980's, we believe that it is essential to have an historical perspective on modern export control policy and the issues raised by the pending legislation.

---

* Senate Committee on Governmental Affairs, The Permanent Subcommittee on Investigations, Report on Transfer of United States High Technology to the Soviet Union and Soviet Bloc Nations, S. Rep. No. 664, 97th Cong., 2d Sess. p. 65 (Nov. 15, 1982) (Permanent Subcommittee Report).

The broad contours of the present public policy debate over competing security and economic interests were visible in the enactment of the Export Administration Act of 1969. The impetus for changing the then existing policy of essentially strategic embargo on East-West trade were political and economic developments such as the emergence of Japan and Europe as economic rivals to the United States, increased interest in East-West trade, and a desire to move away from the politics of confrontation. Indeed, by 1968 the United States was the only country still actively engaged in economic warfare against the Communists; it maintained unilateral export restrictions on approximately 1,000 items that were freely available to Communist countries from sources in other countries.

The 1969 Act changed the focus of United States export control policy giving greater weight to the economic benefits of U.S. exports. However, the inherent tensions in the competing security and economic policy objectives articulated by the 1969 Act have been a continuing source of practical difficulty and political controversy.* The need to accommodate the competing security and economic objectives arises from the major changes that have occurred since the height of the Cold War:

---

* See generally U.S. Congress, Office of Technology Assessment, Technology and East West Trade (November 1979) (1979 OTA Report).

> 1) the United States has lost much of its leverage with its Western trading partners and is now unable to impose a unified trading posture within the Western bloc; 2) it is no longer possible to treat Communist nations as a monolithic bloc; and 3) there has been an overall improvement of relations with the Eastern world.*

Controversy has surrounded U.S. export control policy throughout the 1970's. The Export Administration Act of 1979 addressed serious problems encountered under the 1969 Act as amended through 1977. In the 1979 Act, modifications were made, among other things, to streamline the licensing of exports, to bring the controls under closer Congressional scrutiny, to make administration of the controls more predictable, and to improve multilateral coordination and enforcement by the Coordinating Committee for Multilateral Export Controls (COCOM).

Full implementation of the changes intended by the 1979 Act has not been achieved, and United States export policy has continued to be criticized from different sides. A recent GAO report notes:

> U.S. industry has continued to complain about cumbersome, inconsistent, and unnecessarily rigid controls which, it believes, have caused sales to be lost and potential markets to be left dormant. Other critics contend that export controls are too loose and that inadequate safequards are permitting the Communist countries to enhance their military capabilities through U.S. technology. In attempting to both promote and control exports, the Government is faced with a difficult dilemma. This dilemma is less acute when considering munitions exports, because there is general agreement that such items

---

* Id. at 111.

> should be tightly controlled. This consensus, however, disappears when dealing with dual-use commercial exports -- items that can have significant military applications.[*]

III. PROBLEMS

To address the question of balancing the competing objectives, the makeup of the security and economic problems facing the West today must be understood. Adversary countries do attempt to obtain U.S. technology and technical data for military use. CBEMA notes the report approved by the members of the Senate Permanent Subcommittee on Investigations, documenting the increasingly successful attempts by adversary nations to obtain American technology through legal and illegal means. CBEMA also notes Central Intelligence Agency (CIA) and Department of Defense (DOD) analyses as well as press accounts reviewing the role of Western high technology in the Soviet military buildup. However, the magnitude of this threat is uncertain. According to the Office of Technology Assessment:

> Most observers of the export-licensing process would agree that U.S. and other Western technology has contributed to Soviet military capabilities. There is no agreement, however, on the degree or significance of any such contributions.[*]

---

[*] Report by the Comptroller General of the United States, Export Controls Regulation Could Be Reduced Without Affecting National Security, p. 1 (May 26, 1982) (GAO Report).

1979 OTA Report at 12 (Findings).

At the same time, however, the need to improve U.S. export performance has never been more critical. The United States is experiencing record post-World War II levels of unemployment and business failures at home and record trade deficits internationally. For the first time in three years, according to just-released Department of Commerce (DOC) figures, the 1982 U.S. balance of payments on combined trade in goods and services slipped into deficit -- the result of a record $36 billion merchandise trade deficit, up nearly $10 billion from 1981.

American companies face stiff competition from enterprises in Western countries facing similarly severe economic conditions. Competition in high technology trade is especially fierce now because there has been a leveling in technical performance throughout the Western world. During the 1970's, the U.S. lead in many aspects of high technology dwindled or disappeared. According to a recent article by Paul Freedenberg:

> For the first time in the postwar era, U.S. high technology firms saw their foreign markets taken away by aggressive new competitors and even their domestic market share challenged. This meant that export controls and other constraints, which served as a nuisance in earlier times of unquestioned U.S. high technology dominance, could possibly make the difference between holding on to an important market or losing it, or the difference between penetrating a lucrative new market or forfeiting it to a foreign competitor.*

---

* Freedenberg, U.S. Export Controls: Issues for High Technology Industries, National Journal, p. 2190 (December 18, 1982).

Cooperation between the Government and private industry is not only desirable in order to alleviate regulatory impediments to exports, but is essential to national security. No one can seriously doubt that, as the Permanent Subcommittee found, "cooperation and assistance from the private sector are necessary if export controls are to be enforced more effectively."* Indeed, in the existing enforcement program, "U.S. industry is a major source of information about violations."** The over-reliance on licensing mechanisms and under-reliance on private, voluntary compliance and enforcement activities dilutes over-taxed Government enforcement resources and does not attack the predominant source of technology leakage: Illegal activities such as diversion, espionage, and theft.

A less obvious, but equally urgent problem is that vigorous high technology trade between the United States and the non-communist world is a requirement for maintaining and improving long-term national security. Although DOD continues its technological leadership in many areas, increasingly it must rely on commercial developments. This is particularly true in the area of computers. Thus, United States military capability is becoming more dependent on the vitality and innovativeness of the high technology private sector. This sector's continued leadership is threatened by many legal and administrative burdens, as well as uncertainties not encountered by foreign competitors. Moreover, disincentives to exchange of technology among the United States and its allies hamper the United States' ability to take advantage of advances by private foreign enterprises.

---

* Permanent Subcommittee Report, p.61. See also p.65.

**8v David L. Schlechty, Senior Policy Analyst, DOC, Export Control Policy and Licensing Program of the Reagan Administration, 29 Fed. Bar. News & J. 33, 36 (Jan. 1982).

Export control policy has been formulated and administered under the 1979 Act without needed security guarantees, while creating serious disincentives to U.S. exports. Validated license requirements now cover a range of products and technologies that is broader than necessary and even counterproductive to the task of concentrating on the most strategically important items. As a result, enforcement mechanisms are spread too thin and are often inadequate where needed. The Senate Permanent Subcommittee on Investigations noted that this assertion was "[f]requently . . . made at [its] hearings that the U.S. may be trying to control too many commodities -- and, because it tries to do too much, the government ends up controlling too few goods," and observed "the government could reduce the number of controlled items -- and could do a better job of preventing the Soviets from obtaining the commodities they desire most."*

---

* Permanent Subcommittee Report, p.60.

The GAO, assessing the burden on exporters and the effectiveness of present export licensing policy and practices found that "[o]f the 60,783 export applications that Commerce reviewed unilaterally in fiscal year 1981, almost half could have been eliminated from licensing requirements and controlled in a less burdensome way because the products involved are not considered militarily significant. . . . Submitting these applications costs industry approximately $6.1 million a year and the Government $1 million a year in unnecessary administrative costs."* These figures do not include business opportunities lost because of concern by potential foreign customers over delay and uncertainty.

Existing administrative controls fail to account adequately for the foreign availability of technology and consequently are both ineffective for security purposes and needlessly harmful to economic interests. The United States simply does not have a monopoly on sophisticated products and technologies. Despite the explicit Congressional mandate to adjust the export control system to take account of "foreign availability" of technology, virtually nothing has been done since 1979.

The U.S. is alone in relying on extensive unilateral controls even though many foreign firms possess substitutable products and technologies. These firms are not just in COCOM countries, but in countries over which neither the U.S. nor COCOM exercise any control. Even among COCOM countries, the U.S. exercises controls over more items, and imposes control mechanisms that are broader and more burdensome, than its COCOM partners.

---

* GAO Report, p.ii.

Given that our key policy objective is to deprive the Soviet Union and other adversary countries of certain goods and technologies, and that we cannot do so in many areas due to this "foreign availability," simply prohibiting U.S. exports neither keeps the items from our adversaries nor helps our industrial base with export revenues. Likewise, maintaining burdensome licensing requirements for products and technologies which are available from other markets without such controls diverts our Government export control resources from more effective activities. Also, to the extent U.S. controls unnecessarily reach beyond U.S. borders, they demonstrate a lack of confidence in our COCOM "partners," and a lack of realism as to what can effectively be controlled. This weakens our efforts to keep certain militarily critical technologies from our adversaries through multilateral efforts.

We believe that effective multilateral controls are essential and that such controls should focus on East-West trade rather than needlessly restrict West-West trade. Consequently, COCOM and other existing multilateral mechanisms need strengthening. COCOM remains a viable, albeit imperfect, organization despite its informal nature, the lack of sanctions or adequate policing mechanisms, and the equivocal attitude of several of its members towards the continuation of present levels of export controls.* Current problems include the lack of similarity in critical definitions of controlled items. This gives the appearance on one hand of the U.S. requesting exceptions to the control list, while on the other hand pushing for stricter controls by other countries. Other problems include varying enforcement patterns and divergent national interests, not to mention friction over the recent use of U.S. foreign policy controls.

While there is essential agreement within COCOM concerning the need for national security controls, and significant progress was initiated in 1981 by the first high level COCOM meeting in 25 years, the results of the ongoing COCOM review of the control list is uncertain and are likely to be known only after the completion of work on the renewal of the EAA.

A final problem bears mentioning. In 1979 Congress directed the Secretaries of Commerce and Defense to implement the recommendations of the 1976 Defense Science Board to refocus U.S. export controls away from products toward

---

* See 1979 OTA Report at 12.

"militarily critical technologies." (Technology whose transfer to adversary countries should be highly controlled.)* Unfortunately, little has been done in four years to reduce controls over product exports, and a recent initial Defense Department proposal to increase controls over technical data exports could completely swamp business and the Government with paper work while diverting resources from more effective activities.

IV. NATIONAL SECURITY CONTROLS

A. General Principles

(1) The CBEMA companies believe that it is essential to establish effective export controls on goods and, more significantly, technologies from all sources which can make a direct and significant contribution to the military capabilities of specific adversary countries. We believe this goal can be achieved through improved implementation of controls rather than expanding the scope of export control authority. It should be recognized that there are many ways other than through commercial exports that adversary countries can obtain U.S. technology. Military arms supplies to allied

---

* See Report of the Defense Science Board Task Force on Export of U.S. Technology; Implications for U.S. Defense (February, 1976).

nations, and illegal transactions could be better controlled to forestall leakage of militarily significant technology to adversaries.

(2) Militarily critical goods and technologies are available in most Western industrial countries and in many advanced developing countries, such as Israel, Brazil and Argentina. Therefore, effective national security controls must recognize the fact of "foreign availability." The U.S. Government must seek multilateral agreements with our allies and bilateral agreements with non-adversary countries as the only effective means to deny access to such goods and technologies by adversary countries.

(3) The goal of effective regulation under national security export controls is to deny adversary countries access to militarily critical goods and technologies through legitimate commercial channels and to force such countries to employ illegal means where they attempt to acquire such goods or technologies. This goal can only be achieved through measures which promote voluntary compliance by responsible companies to the maximum extent possible. The objective must be to place export controls on free world trade into the framework of "preemptory" controls whose main purpose is not the regulation of U.S. business but the elimination of legal avenues for Soviet acquisition programs.

(4) It may be necessary to improve national security export controls to deny access to truly militarily critical technologies, keystone equipment and keystone materials, to adversary countries. However, many technologies developed for commercial use are more advanced than technologies currently used for military purposes. DOD necessarily must rely increasingly on technologies developed for commercial purposes. The quality of commercial technology available to DOD from U.S. companies depends to a significant degree upon the ability of those companies to participate effectively in the free world market. Such participation is essential for our companies to learn from interaction with their most advanced foreign competitors and to earn income to finance research and development and capital investment in the United States. Therefore, export control measures which put U.S. high technology companies at a competitive disadvantage to foreign companies in Western markets adversely affect our national security in the long-run and must be avoided to the maximum extent possible.

(5) In order to improve national security export controls on militarily critical technologies, keystone equipment, and keystone materials, it is essential that the items on the Militarily Critical Technologies List (MCTL) be limited to those which can make a direct and

significant contribution to the military capabilities of specific adversary countries. Effective enforcement is possible only if enforcement activities focus on a limited group of truly critical items.

B. Recommendations for National Security Controls

(1) IMPROVE THE MULTILATERAL CONTROL SYSTEM -- The EAA extension must direct the Administration to continue and intensify its efforts with COCOM and other governments to negotiate effective multilateral controls, based on parallel national controls, through whatever means are appropriate, including formal government-to-government agreements.

(a) Exports to COCOM -- Prohibit DOC from requiring a national security validated license for exports of goods or technologies (other than militarily critical technologies, keystone equipment, and keystone materials) subject to multilateral controls to COCOM countries.*

Rationale: The purpose of export controls is to deny adversary countries, not allies, access to specified goods and technologies. This purpose can be achieved effectively only by multilateral controls. Individual review of license requests for exports of goods or technologies subject to multilateral controls to allies is irrelevant to the purpose of the controls and diverts enforcement resources from achieving that purpose.

---

* For purposes of this paper, the term "COCOM countries" means COCOM countries plus Australia and New Zealand.

(b) COCOM Re-Export Controls--Prohibit DOC from requiring U.S. national security re-export controls on goods and technologies (other than militarily critical technologies, keystone equipment, and keystone materials) exported to COCOM countries and subsequently proposed for re-export to adversary countries and to other COCOM countries when such goods and technologies are subject to multilateral security controls.

Rationale: U.S. national security controls will be effective only if all sources, not only the U.S., are controlled. As a practical matter, this can only be achieved through multilateral security controls. Under such controls, each COCOM country must be responsible for controlling re-exports from its territory.

(c) Exports to Certain Neutrals--Require DOC to impose less stringent national security licensing requirements on exports of goods and technologies to non-adversary, non-COCOM countries which agree bilaterally with the United States Government to impose national security controls on exports and re-exports which are similar or identical to COCOM controls.

Rationale: Because all sources must be controlled for national security export controls to be effective, every effort must be made to expand multilateral controls to as many countries as possible. Effective bilateral agreements with non-adversary countries would allow enforcement efforts to focus on illegal acquisition efforts by adversary countries. The precise level of U.S. national security controls under a bilateral agreement would depend on the stringency of the controls agreed to by the other country.

(d) Unilateral Controls--Prohibit imposition of unilateral, national security export controls on goods and technologies which are available from foreign sources except in extraordinary circumstances. Generally require DOC/DOD to publish notice of their intention to impose unilateral national security export controls and to provide a period for interested parties to comment before imposing such controls and to discuss implementation of the controls with the U.S. Government. In critical national security circumstances DOC could impose unilateral national security controls before inviting public comment.

Also, require DOC to publish notice of their decision to impose unilateral national security controls, together with the reason therefore and an assessment of the probable economic impact of such controls, at the time such controls are imposed. The economic impact assessment must include a consideration of the effect of unilateral controls on the competitive position of the U.S. industry concerned as compared to its free world competitors and on the ability of the U.S. industry to continue capital investment and research and development programs.

Finally, require national security export controls imposed unilaterally by the U.S. Government on goods and technologies to terminate one year after the date on which they are imposed if such goods or technologies are available from foreign sources. Prohibit extension or renewal of national security controls on such goods and technologies unless COCOM countries agree to multilateral controls on such goods and technologies. Transition rules for outstanding national security controls must be developed.

Rationale: If all sources of goods and technologies which are substitutable for U.S. goods and technology are not controlled, U.S. unilateral national security controls serve no national security purpose. Furthermore, the effectiveness of national security controls will be improved if there is better communications between exporters and the government before controls are imposed.

(2) ESTABLISH A FRAMEWORK FOR EFFECTIVE TECHNOLOGY CONTROLS OF MILITARILY CRITICAL TECHNOLOGY EXPORTS

(a) Comprehensive Operations License (COL)--S. 397 provides for the development and use of special licensing procedures whereby qualified exporters would be able to conduct a series of transactions with approved consignees without requiring individual validated export licenses. Today we propose that Congress establish a Comprehensive Operations License that would be applicable only to transfers of militarily critical technologies, keystone equipment, and keystone materials. The license would cover such transfers within a network of long-term, well-defined relationships, including subsidiaries, licensees, suppliers, etc. It would authorize, to approved consignees, over an extended period, multiple exports and re-exports of all militarily critical items that would otherwise be subject to individual validated license requirements. Approval of the COL would depend on the demonstrated ability of the exporter to control militarily critical technologies. The COL would not be available for transfers to countries that appear on an Office of Export Administration "proscribed" Country Group list (e.g., Groups P, Q, W, and Y).*

---

* The Office of Export Administration Regulations divide foreign countries into eight groups for export control purposes. 15 C.F.R. § 370.2 and Supp.1. Group P is the People's Republic of China; Group Q includes Romania; Group W includes Poland and Hungary; and Group Y includes the Soviet Union, the Mongolian People's Republic, Laos, Czechoslovakia, and the German Democratice Republic (East Germany).

Rationale: The U.S. Government appears determined to impose new controls on the export of militarily critical technology. Any new government controls must recognize existing commercial safeguards governing the treatment of such technology if they are to be effective. Companies treat technology differently from products. No company utilizing advanced technology can stay in business for long without a sophisticated system of internal control on its technical know-how. By creating a comprehensive licensing mechanism for technology, these proprietary systems can become the foundation for controlling the transfer of technology.

Transfers of technology take place in a wide variety of ways, many of them quite different from the flow of goods across borders. Licensing controls that envision an approval process for every transfer on a transaction-by-transaction basis will inevitably create monumental administrative burdens for the Government and delays for companies with significant international operations. A COL will minimize these problems for U.S. industry while at the same time enabling U.S. officials to focus on the system of control rather than an overwhelming number of individual transactions. This approach provides a strong incentive for U.S. firms to maintain and improve their internal controls and allows the U.S. Government to concentrate its enforcement efforts more efficiently.

(3) ENCOURAGE MORE VOLUNTARY COMPLIANCE THROUGH IMPROVED COMMUNICATION AND INCREASED PREDICTABILITY IN THE LICENSING PROCESS

(a) Licensing Procedures -- Require DOC to publish notice of their intention to require validated national security licenses for exports or re-exports of any category of good or technology and to provide a period for interested parties to comment before such a license is required. In addition, prohibit DOC from requiring a validated license for any category of good or technology unless they first determine that --

(i) the good has an intrinsic utility that will make a direct and significant contribution to the military capabilities of specific adversary countries;

(ii) the technology, keystone equipment, or keystone material has a direct and significant relevance to a military function and will make a direct and significant contribution to the military capabilities of specific adversary countries; and

(iii) there is reliable evidence that the good or technology, or a substitutable good or technology, cannot be acquired by adversary countries from uncontrolled sources.

Require DOC to publish notice of the determinations described above, together with the reasons therefore, before imposing such requirement. Furthermore, require DOC to report quarterly to Congress on measures being taken to improve the U.S. Government's capability to assess foreign availability.

Rationale: Effective national security controls require voluntary compliance by exporters to the maximum extent possible. Such compliance can be maximized only if licensing requirements are based on predictable criteria and are discussed, in detail, with exporters before they are imposed. Furthermore, effective enforcement requires that national security controls be limited to goods and technologies which can make a direct and significant contribution to military capabilities of specific adversary countries. Such goods and technologies can then be thoroughly monitored by enforcement staffs. Finally, unilateral controls serve no national security purpose if substitutable goods and technologies can be acquired from uncontrolled sources.

(b) Judicial Review -- Provide exporters a right to appeal all DOC procedural decisions, including decisions relating to Commodity Control List (CCL) classification, statutory procedural requirements and administrative penalties, to the Court of International Trade. The standard for review in such cases would be whether DOC action is arbitrary, capricious, or otherwise not in accordance with law.

Rationale: Judicial review is the only means to force DOC to follow the requirements of the statute.

(c) Control List -- Require DOC to review each category on the control list annually to determine if goods or technologies described in that category can continue to make a direct and significant contribution to the military capabilities of specific adversary countries. Also, require DOC to review annually each control list category of technology and related keystone equipment and keystone material which comprise the MCTL to determine if such items continue to have direct and significant relevance to a significant military function of specific adversary countries. Finally, require DOC to publish its determinations, together with the reasons therefore, and to remove categories from the control list or MCTL or to reduce the level of controls, as appropriate.

Rationale: Both the control list and the MCTL must be limited to truly critical items to permit effective enforcement of national security controls. Given the rapid rate of change of technologies, frequent review of technologies on the control list, particularly MCTL technologies, will be essential to achieve this result.

(d) Control List Nomenclature -- Require the U.S. Government to seek COCOM agreement to the use of the nomenclature of the Harmonized Commodity Description and Coding System. Require DOC to adopt the Harmonized System nomenclature as the Control List nomenclature when COCOM agrees to this change.

Rationale: Effective voluntary compliance requires a comprehensive commodity classification system upon which objective decisions about licensing requirements for goods can be made by exporters. The Harmonized System nomenclature will serve this purpose and will facilitate enforcement among COCOM countries.

(e) Mitigation of Penalties -- Provide DOC explicit authority, and direct DOC to mitigate penalties under section 11(c) of the EAA in light of facts and circumstances, such as unintentional violations or voluntary disclosure of violations by exporters.

Rationale: Exporters should be encouraged to voluntarily disclose violations in an effective control system. Specific authority to mitigate penalties when violations are voluntarily disclosed would encourage such behavior.

V. Conclusion

In conclusion, national security export controls can only be effective if our country's enforcement efforts concentrate on products and technical data that are truly militarily critical, if multilateral controls focus on East-West trade in items that are not available outside the U.S., and through voluntary compliance and cooperation between the U.S. Government and U.S. exporters. These objectives can be advanced significantly if Congress provides for the effective implementation of the foreign availability provisions of the Export Administration Act, and adopts CBEMA's proposal for a Comprehensive Operations License.

COMPREHENSIVE OPERATIONS LICENSE

The Comprehensive Operations License (COL) would be available only to applicants engaged in the export of militarily critical technology. For these applicants, the COL would cover the export to approved consignees of items that otherwise would be subject to individual validated license requirements. The COL would authorize multiple exports and re-exports to eligible countries and consignees over an extended period. Approval of the license would depend upon the adequacy of the internal control system of the applicant.

Eligible Countries

Country Groups T and V (including COCOM, Australia and New Zealand). Country Groups P, Q, S, W, Y, and Z would be ineligible. The Country Groups listing is set out at 15 C.F.R. § 370 Supp.1, and establishes eight groups of countries for export control purposes.

Eligible Items

Militarily critical technical data, keystone equipment, keystone materials, and such other commodities and materials that may otherwise be subject to validated export license requirements with certain exceptions such as for nuclear or communication intercept devices.

Eligible Consignees

Consignees could be branch, subsidiary, affiliate, parent, licensee, joint venturer, supplier, vendor or subcontractor.

Term

Two years, renewable every two years.

Supporting Documentation

- Export license application.
  Broad description by class, without detailed commodity lists and technical data specifications, of items subject to license.
- Description of applicant's internal control system over items subject to license.
- Operating agreement between applicant and consignees that restricts disclosure or transfer of items subject to license.
- Supporting statement from foreign consignees.

License Requirements

- Licensed items subject to applicant's internal control system.
- Contractual obligation between applicant and consignees not to disclose or transfer items subject to license.

- Designated management responsibility for control of items subject to license.
- Periodic access for U.S. Government to inspect applicant's internal control system.

Additional Features

- No value limitation.
- No requirement that applicant have purchase order for items to be licensed.
- Semi-annual requirement to report by broad description the export during previous six months of items subject to the license.

Transition Rule

- No interference with applicant's existing contractual obligations to export technical data if such contractual obligations complied with Export Administration Regulations as they existed prior to imposition of validated license requirements on export of militarily-critical technology.

CBEMA

April 6, 1983

The Honorable John Heinz
United States Senator
SR 277
Washington, DC 20510

Dear Senator Heinz:

This is in response to your questions raised in the follow-up letter to the Export Administration Act hearings of March 2. I will state your question prior to giving CBEMA's answer.

1. Do you oppose giving the Customs Service the responsibility for the criminal enforcement of the Export Administration Act; and if so, is there any form in which you would support this, or is your opposition unequivocal? Why?

   CBEMA does not oppose giving the responsibility for criminal enforcement of the EAA to the U.S. Customs Service. However, we would feel more comfortable with this arrangement if the U.S. Customs Service had access to vital licensing records from the Department of Commerce, in order to do a proper and thorough job.

2. and 3.

   Would you support the conversion of the Federal Trade Commission into an office within the Department of Commerce, headed by a Deputy Assistant Secretary? and

   If responsibility for export administration were to remain the responsibility of the Commerce Department, would you favor making the head of that operation an Under Secretary of Commerce, with no responsibilities other than administering our export control laws?

   To date, CBEMA member companies indicated that they have had little or no problems with the current organizational set-up within the Department of Commerce. Therefore, we see no reason to make any changes along the lines which you have suggested in this question.

If we can be of any further assistance, please contact us.

Very truly yours,

Vico E. Henriques
President

VEH:ckk

Computer and Business Equipment Manufacturers Association 311 First Street N.W. Suite 500 Washington D.C. 20001 (202) 737-8888

GERALD GLEASON, VICE PRESIDENT, THE FOXBORO CO., FOXBORO, MASS., REPRESENTING SCIENTIFIC APPARATUS MAKERS ASSOCIATION

Mr. GLEASON. Now, it's my turn. Mr. Chairman, my name is Gerald Gleason. I'm a vice president of the Foxboro Co., headquartered in Foxboro, Mass.

Foxboro is a leading manufacturer of process control systems and instrumentation, which are used largely in the fluid processing industries.

For the year 1981, our sales were $607 million, of which 48 percent was installed outside the United States. This percentage underscores the fact that international trade is vital to Foxboro, and that changes in the Export Administration Act for 1979 can have a far-reaching economic impact on our corporation.

I'm appearing before you today on behalf of Scientific Apparatus Makers Association [SAMA]. I have a lengthy statement, but as you've already indicated, Mr. Chairman, it will be included in the hearing record.

SAMA is the national trade association representing this country's manufacturers and distributors of a wide range of scientific, industrial, and medical instruments and equipment.

In the context of these hearings, it is important to stress the importance of exports to our industries. From 1979 through 1981, U.S. exports of scientific, industrial, and medical instruments increased by almost $2 billion.

Exports in 1979 amounted to $5⅓ billion, while in 1981, exports increased to $7⅓ billion. That is a 37 percent rise over the 2-year period.

While imports of instruments and other equipment and apparatus also increased 36 percent over the same 2-year period, the ratio of exports to imports remains very high, almost 3 to 1.

Most significantly, the industry which SAMA represents contributed a surplus of over 4.6 billion to the U.S. trade balance in 1981, up from 4.2 billion in 1980.

These exports have been a vital factor in providing the economies of scale, the sales volumes, and the earnings that are needed to support research in our industry.

Such research is essential if we are to maintain an edge relative to foreign suppliers in this fast-moving and highly competitive field, where rapid obsolescence is the norm.

Unfortunately we believe this edge has been seriously eroded by the way in which U.S. export controls have been administered.

We believe the present system of export controls as it is applied to U.S. high-technology exports, has given substantial advantages to our foreign competitors.

When this type of overregulation hurts our nondefense high-technology related industries, it also hurts our industrial base. And thereby, our national defense, which so often benefits from the fallout of commercial developments, for example, in areas such as microcomputers.

As you know, Mr. Chairman, we in the high technology industries have, through our trade associations, attempted to develop a unified and constructive response to the present problems confronting our companies in the area of U.S. export control policies. The general outline of this effort has been outlined by Mr. Henriques. I would like to devote my allotted time to an area of particular interest to SAMA member companies: the imposition of U.S. unilateral national security controls, particularly as they apply to our industry.

UNILATERAL CONTROLS INEFFECTIVE

All SAMA members, and I believe all other responsible U.S. manufacturers, want and vigorously support those regulations limiting export of technologoy and products that could otherwise benefit the military potential of an adversary. Our concern is that most unilateral controls have not been effective, because the technology, or products, are already readily available from foreign sources.

For example, to underscore a point already made this morning by Mr. Olmer, in the case of most scientific instruments, the equipment itself is not considered of military significance, even by the Department of Defense. Only the presence of an embedded microprocessor, frequently valued at less than $10, in an instrument valued at $20,000 or more, puts the instrument in a category for which the United States alone requires a validated license. The microprocessor itself, incidentally, is often readily available from foreign sources in commercial quantities.

The net effect of the unilateral licensing requirement is that the United States loses overseas customers. Those customers who value reliable sources of supply simply take their business to our less encumbered foreign competitors. Meanwhile, the U.S.S.R. is still able to obtain instruments fully equivelent to ours. Yet, the Department of Commerce program is slow. Analytical instruments are being studied now, but process control products containing microprocessors are still considered to require a validated license.

Therefore, we believe the legislative language should be tightened to restrict the institution of unilateral controls. One way would be to allow such controls to be imposed for only a very limited period, say, 1 year, and only on products and technology truly unique to the United States, so that during the period, multilateral controls could be negotiated. This approach implies a corollary that multilateral controls be effective and in force. I believe that the question of putting teeth into multilateral controls must also be addressed, as you have, Mr. Chairman, in S 397.

As a result of the embargo on computer, oil, and natural gas application technologies to the Soviet Union in 1982 alone, the Foxboro Co. has lost an estimated $17 million in purchase orders. Our inability to obtain export licenses for our products has seriously eroded our market position, not only in the Soviet Union and Communist countries themselves, but in Europe, in Western Europe, where our products are normally designed into plants or other systems that are being exported to the free world as well as the Communist world.

In many instances, the Soviets themselves are now instructing contractors and engineers on their projects, not only those with military significance, but those of all types, not to specify U.S. suppliers in any quotation request where comparable equipment can be obtained from non-U.S. suppliers.

In our business, we have many foreign competitors in many countries who are suppliers of comparable process control systems and instrumentation and who are reaping the harvest of our circumstances. In addition, the majority of construction engineering firms dealing with the Soviets on major construction projects are European based, and as a result of their experience with U.S. export controls vis-a-vis the pipeline project, are now very hesitant to specify U.S. suppliers for any project.

Their attitude is, "Why should we be concerned about the impact of U.S. unreliability and U.S. export controls on our contracts? Let us specify non-U.S.-origin equipment that will do the job with considerably less government interference."

Due to the unilateral foreign policy controls on Libya, Foxboro Co. has been disqualified on bidding on projects for purchase orders totaling $3 million in the last 12 months alone. As with the Soviets, Libyan end users have no problem obtaining comparable products for their process control needs, and are exercising this option.

The point I would like to leave with you is that when foreign sources exist, in the absence of effective multilateral control, unilateral control is not just ineffective in denying equipment to an adversary, but is directly harmful to our own defense, because it hurts the industries from which defense draws innovative technology. If I could just close with one small example.

This morning we heard Mr. Olmer say that the Commerce Department is studying the decontrol of personal computers. At this particular moment, I am in the position of trying to export an IBM personal computer to a resident U.S. citizen, one of our employees, who is in Shanghai, and who needs it for his work. And I have just about despaired of doing this. We are just about to place a purchase order for a Japanese personal computer.

That's the kind of loss of business that results from these excessive controls.

Thank you, Mr. Chairman.

[The complete statement follows:]

STATEMENT OF GERALD GLEASON

THE FOXBORO COMPANY

ON BEHALF OF THE

SCIENTIFIC APPARATUS MAKERS ASSOCIATION

SUMMARY OF RECOMMENDATIONS

SAMA supports the provisions of S. 397 which would:

A. Strengthen the criteria to be met by the Executive Branch before foreign policy controls are implemented.

B. Provide for the sanctity of contracts already in existence at the time of imposition of foreign policy controls.

C. Impose the same requirements with respect to foreign availability for foreign policy controls as presently must be met before national security controls are imposed.

D. Require the Department of Commerce and the Department of Defense to report to the Congress on a quarterly basis on the operation and improvement of their foreign availability assessment capability; and

E. Authorize the Secretary of Commerce to consult with Industry Sector Advisory Committees concerning technical and policy matters associated with foreign policy controls.

Export licensing requirements for COCOM countries should be eliminated.

Unilateral export controls on instruments containing embedded microprocessors should be eliminated.

The imposition of U.S. unilateral national security controls should be limited to products which are not available from foreign sources. If such controls are applied to products which are available from foreign sources, the Department of Commerce shall publish a notice of its intent to implement such controls, and allow time for public comment. Any such U.S. unilateral national security controls shall be effective for a period of one year unless COCOM countries have agreed to multilateral controls on such goods and technologies.

The Export Administration Act should include provision for a Comprehensive Operations License.

A committee of high level industry and govenment officials should be created to hammer out workable procedures to exclude the export of key products and components and manage decontrol at a pace consistent with technological advances here and abroad.

The U.S. government should adopt a formal voluntary disclosure policy to encourage prior disclosures of export violations.

Consideration of a new Office of Strategic Trade should be preceeded by resolution of more fundamental problems associated with U.S. export control policy such as foreign availability, the need to define "militarily critical", the need to strengthen COCOM and the need to persuade non-COCOM countries to deny militarily critical technology and keystone equipment to the U.S.S.R. and its satellite countries.

Mr. Chairman and Members of the Subcommittee:

My name is Gerald Gleason and I am a Vice President of the Foxboro Company which is headquartered in Foxboro, Massachusetts.

Foxboro is a leading manufacturer of process controls systems and instrumentation which are used in varied industrial applications. For the year 1981, our sales were 607 million dollars of which 46% was installed outside the United States. This percentage underscores the fact that international trade is vital to Foxboro, and that changes to the Export Administration Act of 1979 can have a far reaching economic impact on our corporation.

I am appearing before you today on behalf of the Scientific Apparatus Makers Association (SAMA).

SAMA is a national trade association representing this country's manufacturers and distributors of a wide range of scientific, industrial and medical instruments and equipment. The 180 companies who are SAMA members, many of small or moderate size, constitute the bulk of American industry producing research laboratory, analytical, electronic test and measurement, and process measurement and control instruments, as well as clinical laboratory instruments, patient monitoring instruments, and a wide range of laboratory apparatus and equipment.

In the context of these hearings, it is important to stress the significance of exports to our industries. From 1979 through 1981, U.S. exports of scientific, industry which SAMA represents contributed a surplus of over $4.6 billion to the U.S. trade balance in 1981, up from $4.2 billion in 1980.

These exports have been a vital factor in providing the economics of scale, the sales volume and the earnings that are needed to support research in our industries. Such research is essential if we are to maintain an edge relative to foreign suppliers in this fast moving and highly competitive field where rapid obsolescence is the norm. Unfortunately, we believe this edge has been seriously eroded by the way in which U.S. export controls have been administered. We believe the present system of export controls, as it is applied to U.S. high technology exporters, gives a substantial advantage to our foreign competitiors. When this type of over-regulation hurts our non-defense high technology industries. it also hurts our industrial base and thereby our national defense, which so often benefits from fallout from commercial developments - for example, in areas such as microcomputers.

As you know, Mr. Chairman, we in the high technology industries have, through our trade associations, attempted to develop a unified and constructive response to the present problems confronting our companies in the area of U.S. export control policy. The specifics of this effort will be outlined by all of us appearing before you today. However, it is important to remember that each specific recommendation for change in the Export Administration Act which will be offered by SAMA and others on the panel is based upon several fundamental principles. I believe it is important to stress these principles because if we can all agree on their validity, I believe that we can also come to an agreement on how the present U.S. export control policies can be improved to meet both U.S. national security and international competitive needs.

First, SAMA believes it is essential to establish effective export controls on goods and, more significantly, technologies from all sources which can make a direct and significant contribution to the military capabilities of specific adversary countries. We support such controls and we believe they can be achieved without expanding the scope of export control authority under current law.

Second, we know that militarily signficant goods and technologies are available in many Western industrial countries and in many advanced developing countries, such as Israel, Brazil and Argentina. Therefore, in our view, effective national security controls must recognize the fact of foreign availability. The U.S. government must seek multilateral agreement with our allies and bilateral agreements with non-adversary countries as the only effective means to deny access to such goods and technologies by adversary countries.

Third, we recognize the need for effective national security export controls to deny access to militarily critical technologies to adversary countries. Today, many technologies developed for commercial use are more advanced than technologies currently used for military purposes. The Department of Defense necessarily must rely increasingly on technologies developed for commercial purposes. The quality of commercial technology available to the Defense Department from U.S. companies depends to a significant degree upon the ability of those companies to participate effectively in the free world market. Therefore, in our view, export control measures which put U.S. high technology companies at a competitive disadvantage to foreign companies in Western markets adversely affect our national security in the long run and must be avoided to the maximum extent possible.

S. 397

Although the major focus of my testimony today will be with respect to the national security provisions of the Export Administration Act, I would like to take this opportunity to compliment you, Mr. Chairman, for the leadership you have shown in addressing some of the major problems associated with the implementation of present U.S. export control policy.

Your bill, S. 397, addresses some of these problems, expecially as they relate to controls imposed to achieve U.S. foreign policy objectives, head on, and we strongly support your efforts to:

A. Strengthen the criteria to be met by the Executive Branch before foreign policy controls are implemented;

B. Provide for the sanctity of contracts already in existence at the time of the imposition of foreign policy controls;

C. Impose the same requirements with respect to foreign availability for foreign policy controls as presently must be met before national security controls are imposed;

D. Require the Department of Commerce and the Department of Defense to report to the Congress on a quarterly basis on the operation and improvement of their foreign availability assessement capability; and to

E. Authorize the Secretary of Commerce to consult with the Industry Sector Advisory Committees concerning technical and policy matters associated with foreign policy controls.

With these provisions, Mr. Chairman, you have recognized the fact that the United States government is one of the few governments in the world that imposes foreign policy controls on its exporters and; that the effectiveness of these controls over the past years has been questionable, at best, in achieving their desired results.

What is not questionable is the fact that the imposition of foreign policy controls by the President is one of the major reasons why U.S. exporters have gained the reputation over the past years as being unreliable. With increasing regularity, this is causing foreign customers in non-targeted countries to no longer consider U.S. exporters for their procurements. This coupled with the increasing availability of equivalent commodities from foreign manufacturers is causing U.S. industy to lose increasing segments of the foreign market.

You have chosen to curtail the President's ability to impose controls for foreign policy purposes in S. 397 as a means of overcoming this problem; SAMA would go one step further and is willing to support language which would remove the President's authority to impose these controls at all.

There are other provisions in your bill, Mr. Chairman, which deserve careful consideration. I will comment on them later in my testimony.

National Security Controls

Mr. Chairman, although we do disagree with Senator Jake Garn on other matters in the area of U.S. export control policy, we are in agreement with his statement upon the introduction of S. 434 last month. At that time, Senator Garn said:

> "Export administration, as I have indicated is far removed from the policy making levels of government. So instead of a flexible organization able to respond quickly and adequately to national needs, we have a system that requires American exporters to make 76,677 export license applications in fiscal year 1982 and then granted 98.8 percent of those applications. With nearly every application approved, how many of those applications were in fact totally unnecessary in light of our actual export control needs?"

Let me relate Senator Garn's comments to an area of concern to all U.S. high technology exporters and to an area of specific concern to the member companies of SAMA.

Export Licensing to Friendly Countries

In its Report to the Congress of May 26, 1982, The General Accounting Office (GAO) noted that licensing requirements for high technology exports to COCOM countries appear to be excessive considering that:

- In view of uniform COCOM controls applicable to non-COCOM countries, some member countries do not require export licenses for high technology exports to other COCOM members.
- The U.S. government denied only six high technology export licenses to COCOM countries over the past three years, and in each case, the denial was made because the U.S. exporter was already restricted from further exporting.
- There is a precedent to reduce U.S. licensing requirements of many years standing on U.S. exports of high technology goods to Canada.

For years, the United States and Canada have had a special relationship whereby validated licenses are not required to export most U.S. commodities which are to be consumed in Canada. This arrangement has worked well, and argues for extension to some or all of our COCOM partners, and possibly to Australia and New Zealand. Extension of the U.S./Canada approach would save U.S. exporters the time and expense presently required to prepare many license applications, an exporter cost estimated by the GAO to be in excess of $6 million a year. It would also save the government an estimated $1 million a year by eliminating some 25,000 applications per year, or over one-third of the total number of applications submitted last year. This would enable U.S. licensing officers to focus on truly important cases in more critical areas of the world.

This reduction in the flow of license applications would also relieve some of the overload in Exporter Services. At present, it is almost impossible to get through by telephone. Yet, it is extremely important that exporters such as Foxboro have ready access to this office.

If this step was taken, appreciable savings for Foxboro would be realized in minimizing the costs of an expensive computerized export license reporting system, and the overhead of administrative support personnel.

The resultant reduction in export licence applications might obviate the need to legislate new and shorter licensing deadlines such as you propose in S. 397. While commendable in intent, licensing deadlines do little to solve the more fundamental problems with current U.S. export control policy.

Export Licensing of Products Containing Microprocessors

The decison as to whether or not a product is subject to individually validated U.S. export licenses has historically been based on the characteristics of the product and not upon the characteristics of the parts which it contains. For example, microprocessors are licensable if supplied as individual semiconductor components. However, automobiles, washing machines, and a host of other basically non-electronic products containing microprocessors are not considered licensable. The rationale is that no one is likely to purchase and disassemble an expensive product merely to obtain a microprocessor whose value is only a few dollars. We need to extend this practical approach to other product areas.

The U.S. government, however, has been unwilling to extend this rationale to electronic instruments such as those manufactured by SAMA members. At this time, the U.S. licensing authorities generally consider an electronic instrument, which would not otherwise require a license, to require one if the instrument contains a microprocessor.

SAMA member companies are using microprocessors in constantly increasing numbers in the instruments and other products they manufacture because of their utility, versatility and reliability. This has resulted in a corresponding increase in the number of export license applications filed with the Department of Commerce. The applications are filed, reviewed by interested agencies and routinely approved after a period of four to eight weeks. To give you some idea of the magnitude of this paper shuffling process, SAMA asked several of its member companies to review the annual number of license applications submitted for products falling within Commodity Control 4529B (the category which catches most SAMA member company products impacted by the embedded microprocessor issue). The results of this informal survey are as follows:

YEAR 1981

	Country Group	Total Number Licenses Approved	Total Number Licenses Denied	Total Millions of Dollars Licenses Approved
Company A	Free World (*)	160	0	$ 5,000,000
	China (PRC)	82	0	2,000,000
	East Bloc	68	0	2,400,000
	USSR	12		420,000
	TOTAL	322	0	$ 9,820,000

NOTE (*) It is estimated that an additional 2,400 license applications valued at $60,000,000. would have been processed in 1981 for Free World countries if Company A did not have the use of a Distribution License.

	Country Group	Total Number Licenses Approved	Total Number Licenses Denied	Total Millions of Dollars Licenses Approved
Company B	Free World	62	0	$ 1,000,000
	China (PRC)	0	0	0
	East Bloc	10		640,000
	TOTAL	72	0	$ 1,640,000
Company C	Free World	173	0	$ 1,038,000
	China (PRC)	18	0	437,500
	USSR	9	0	287,000
	TOTAL	200	0	$ 1,762,500

These figures illustrate that, for these three typical SAMA companies, all licenses were approved.

The Department of Commerce's own figures bear out the experience of the three SAMA member companies. The Commerce Department figures show that in 1981, only 24 of the 1,582 applications to export commodities controlled under this item were rejected. In the words of the former Chairman of the House Subcommittee on International Economic Policy and Trade, Jonathan Bingham:

"These figures suggest that perhaps this CCL entry is more broadly defined, and more restrictive, than is necessary to protect national security. Perhaps if this category could be limited to items truly of concern to national security, we could lessen the licensing burden on U.S. industry as well as government, and eliminate the disadvantage U.S. firms face in competing with foreign firms who are able to ship products immediately, without waiting for their government's approval of an export license."

Almost three years ago today, when I appeared before this Subcommittee, I said:

"SAMA is convinced that the vast majority of instruments and systems currently requiring validated licenses have no business on the Commodity Control List at all.

I would like to make the point that many SAMA members have found that products not incorporating microprocessors have required no license. The simple addition of a microprocessor has required that all of these instruments go through a very complex licensing procedure. It's very interesting. I've been told by our engineers that the microprocessor added to one of our products in this category can be purchased in the Radio Shack stores found in every neighborhood by anyone who wanders in.

So Friday afternoon on the way home from work, just to make sure I wasn't going to tell an untruth here this morning, I did stop in and buy an Intel 8080 from Radio Shack. That is exactly the microprocessor that is incorporated in one of our products that now requires a license, while it did not require the license prior to the incorporation of this particular chip."

Now, three years later, and despite many studies by the Department of Commerce and the Department of Defense, if our instruments contain Intel 8080's, they still require an export license before they can be shipped. Since Intel has gone through 4 generations of microprocessors since 1979, this continued requirement appears to us to fly in the face of reality.

It offers us little comfort to learn periodically that the Department of Commerce and the Department of Defense have initiated repeated efforts to focus on this problem and decontrol some of these instruments. After all, the issue has been before them since 1977.

SAMA believes it is high time for the U.S. government to follow the policies of many other Western governments and drop the requirement for export licensing of electronic instruments containing microprocessors so long as (1) the instruments are not otherwise licensable, (2) the microprocessors are used to facilitate data acquisition or other operational features, and (3) the microprocessors are in circuits that are "dedicated" to their function and cannot be reprogrammed for other uses.

Unilateral Export Controls

U.S. businessmen are concerned that the tense international situation, vis-a-vis the Soviet Union, and the growing concern in the Department of Defense over transfers of militarily valuable technology may lead to the imposition of a number of additional unilateral licensing controls. Presumably, the rationale for extending U.S. unilateral controls would be: (1) to prevent the utilization of certain products and technologies to support the military-industrial base of the Soviet Union, (2) to send the Soviets additional "signals" of U.S. displeasure, and (3) the belief that extending unilateral controls will induce the members of COCOM and perhaps other Western countries, to adopt similar measures.

SAMA believes that unilateral controls should be employed very sparingly and only where it can be reasonably determined that such controls will have a direct measurable effect on the target country(ies). This is because there is ample evidence that the actual effect of unilateral controls is far different from that which was intended. For example:

1. Most products and technologies controlled by the U.S. but not presently subject to COCOM controls are readily available from any number of non-U.S. sources. The net effect of the unilateral U.S. export control measures will not be to deprive the Soviets, but rather to cede this and related markets to appreciative non-U.S. suppliers.

Foxboro's COCOM competitors in process control computers can readily access the Soviet market by supplying low performance parameter systems very comparable in capability to our own. Their government's obligation is in many cases merely to inform COCOM of the intended export while they then proceed with the issuance of an export license. This dichotomy has far reaching effects on Foxboro's reputation as a reliable supplier in the industries that we would normally serve, including food processing, central power generation, petrochemical production and mining applications.

2. Many purchasers located in friendly countries abroad have thriving export businesses in which U.S. products play an important part, either as parts and components or as supporting equipment. In recent years, a number of these purchasers have become increasingly alarmed at what they perceive to be never-ending vagaries of U.S. controls - South Africa, Aimbabwe, Uganda, human rights, nuclear proliferation, Iran, etc. Many are seriously considering reducing their dependence on U.S. suppliers, not so much out of concern that U.S. controls may be imposed over U.S. products they consume locally, but because they fear the inevitable U.S. wish to extend controls extra-territorially over re-exports which might place their export business in jeopardy. The U.S. is alone among its friends and allies in attempting to control such re-exports unilaterally. SAMA believes that unilateral re-export controls - if necessary at all - should be severely limited and carefully reviewed for their effectiveness in impacting primarily the targeted end countries.

3. An increase in controls means more work for exporters in preparing applications and for U.S. licensing officials in handling them, and time lags become inevitable. Such delays, in turn, tend to divert business to our competitors abroad, who, not facing similar licensing requirements, can accept orders unequivocally and ship as soon as the material is ready.

4. Past history amply demonstrates that, once imposed, controls seem to enjoy a life of their own and are very difficult to terminate. In those cases, U.S. business bears the burden of increased paperwork, delays, and loss of business long after conditions have changed and the reason for instituting controls has gone.

Mr. Chairman, SAMA believes that the question of the imposition of unilateral U.S. export controls for national security purposes needs to be addressed in this year's debate over the Export Administration Act. In this regard, we recommend that the Act be amended to provide:

A. The imposition of unilateral national security export controls be limited to products which are not available abroad.

B. If unilateral national security export controls are to be applied to products generally conceded to be available abroad or which an appropriate Technical Advisory Committee has certified as available abroad, the Department of Commerce shall publish a notice of its intention to impose such controls. Such notice shall include a statement as to the nature of the circumstances necessitating the imposition of such controls and shall provide a period for interested parties to comment before the imposition of such controls.

C. The requirement that national security export controls imposed unilaterally by the U.S. on goods and technologies which are available abroad to terminate one year after the date on which they are imposed. The Act should also prohibit extension or renewal of such national security controls on goods and technologies unless COCOM countries have agreed to multilateral controls on such goods and technologies.

Technology Transfer

SAMA supports the need for export controls to insure that truly critical U.S. technology and products are not exported or reexported to potential adversaries. Having said this, we must also point out again that the strength and vitality of the U.S. technological industrial base is dependent on the ability of U.S. firms to compete effectively in markets throughout the world. In an industry such as ours, where it is common for international business to account for 30-40 percent of the total (and even more in some cases), it is critical that export control regulations not overburden our member companies to the extent that they become less competitive, lose sales and resultant profits, and thereby cripple their ability to invest in needed R&D, skilled personnel and up-to-date production facilities.

In this context, we are seriously concerned over the precedent a proposed amendment to Section 379 and other Sections of the Export Administration Regulations recommended by Dr. Richard DeLauer, Undersecretary of Defense for Research and Engineering, would establish for technology controls in the semiconductor and in other U.S. high technology industries. The major problem we see is that Dr. DeLauer's proposal virtually ignores the extensive efforts U.S. semiconductor firms and other U.S. high technology companies make to protect their own technical data. No company sees it in it's best interest to have it's proprietary data fall into the hands of a competitor, be it a foreign or a U.S. firm. As a consequence, a considerable amount of effort is expended to prevent this sort of thing from happening. By not recognizing the fact that it is in industries' own best interest to protect critical data, and by imposing a case-by-case government review process on transfers, this new and very stringent set of controls will create a voluminous paperwork burden and will impose serious constraints on relations between U.S. firms and their foreign subsidiaries and suppliers. This would inhibit our industries' ability to compete in world markets and prevent the generation of the very types of advanced technology the controls are intended to control.

Several of our member companies as well as those from other trade groups have spent a considerable effort analyzing the specific regulatory changes proposed by Dr. DeLauer, and have offered suggestions as to how they could be modified to meet the intended objective (i.e., to prevent acquisiton of militarily critical U.S. technologies and keystone equipment by potential adversaries) while, at the same time permitting U.S. companies to continue their relations with foreign activities, suppliers and contractors without U.S. government regulation on a transaction-by-transaction basis. We believe this can be accomplished through a "Comprehensive Operations License" (COL). This license would cover long-term, well-defined relationships, including subsidiaries, licensees, suppliers, etc. It could authorize multiple exports and re-exports over an extended period for all items that would otherwise require a validated license and would leave intact the current audit trail of goods transactions through the Shipper's Export Declaration. Approval of the COL would depend on the demonstrated ability of the exporter to control militarily critical technology. Others on this panel will discuss this concept in detail. It is our hope it will be given serious consideration as an alternative to that offered by Dr. DeLauer.

It is important to remember that present Export Administration Regulations already permit the use of a distribution license for the shipment of certain commodities to consigness that have been approved in advance. The distriubtion license constitutes the backbone of many exporters' overall distribution system. Therefore, SAMA believes that any new type of license introduced under bulk licensing procedures should be in addition to present bulk licensing procedures and not in their place.

I would also note that as a part of his proposal to implement controls on technology, Dr. DeLauer proposed "considerable decontrol" of products as a concomitant objective. To date, we have seen no evidence of such decontrol. It is our hope that these two steps — further control of technical data and decontrol of products — can proceed on a parallel basis. As we all know, once controls are imposed, they generate a life of their own despite advances in technologies. For this reason, it is our hope that any new controls on technology will be accompanied, in fact, by decontrol of a substantial number of less sensitive products.

Compliance

As the Subcommittee is well aware, recent disclosures by the CIA and hearings conducted by the Senate Permanent Subcommittee on Investigations have focused attention on the continuing efforts of the Soviet Union and other countries of the Warsaw Pact nations to secure sophisticated U.S. equipment and U.S. products and technology, ostensibly for use in the United States or friendly countries but actually for illegal shipment to unauthorized destinations.

The Administration is sensitive to the fact that these acquisitions, which the Soviets gain so cheaply, can put our country at a military disadvantage. The Administration has recently taken a number of steps to limit any such illegal activities. For example: Operation Exodus; Commerce Department organizational changes in the compliance area, the addition of branch compliance offices; and increased surveillance of Soviet Bloc nationals in the U.S. by appropriate agencies.

As you know, under delegation of authority, with the power of successive redelegation as authorized by Section 1 of the Act, as well as under Title 22 of the U.S. Code, Section 401, et seq., U.S. Customs may detain or seize any commodity whenever a Customs Officer knows, believes, or has probable cause to believe that the commodities are being exported in violation of the Export Administration Regulations. Since its inception in early 1982, Operation Exodus has had an adverse impact on exporters. To give you some idea of the problems which are confronting many expoters, let me describe the events that take place when a shipment is detained under Operation Exodus by the Customs Service:

A. The Customs agent at the port of intended export mails a detention notice to the exporter.

B. The exporter must then mail descriptive technical data of the commodities detained to U.S. Customs' Operation Exodus headquarters in Washington, DC.

C. The Operation Exodus headquarters in turn mails the data furnished by the exporter to the Office of Export Administration (OEA) for evaluation and determination of licensing requirements.

D. The determination is mailed back to Operation Exodus headquarters, who then notifies the agent at the port of intended export.

E. If the commodities were being exported in violation of the Regulations, the shipment is then seized and the exporter is notified. Otherwise, the agent releases the shipment to the carrier.

As you might expect, the fallacies and delays in the implementation of Operation Exodus are numerous. Some of the problems are:

A. The agent who detains shipments invariably has no technical background whatsoever that would allow him to make the simplest of licensing determinations during initial inspection. Because of this lack of technical expertise, the exporter cannot discuss with the agent why the shipment should not be released and explain why the goods are not subject to validated licensing.

B. Even though the OEA has technical data sheets and catalogs on file for most commodities and can verbally advise Customs immediately of the licensing requirements of any of these products, the exporter still has to comply with the time-consuming mailing procedures outlined above.

C. When the detained goods are released to the carrier, the exporter is not notified by Customs. Unless the carrier notifies the company, the only way it will know when the goods have been exported is to periodically telephone Customs for status.

Your bill, Mr. Chairman, contains language which would transfer the enforcement responsibilities from the U.S. Department of Commerce to the U.S. Customs Service. Frankly, this provision has been met with different reactions by SAMA member companies. However, if the problems I have outlined above can be resolved, I believe that will go a long way to obviate the need for lengthy debate on the questions of who should have the ultimate responsibility for enforcement.

SAMA also believes that the private sector shares responsibility for effective export control policy. In this context, there are several things which the U.S. exporters and the government can do cooperatively to insure the U.S. interests.

U.S. businessmen can assist the export control compliance program by taking the following actions:

1. Identifying inquiries and orders for products, parts, or technology, including software, which are likely to be shipped outside the United States and seeing that they are handled by export specialists;

2. Ensuring that their export specialists are sufficiently knowledgable about export controls and that appropriate screening and licensing procedures are followed;

3. Making certain that their exporters - whether they live abroad, travel abroad, transmit information abroad, or merely come in contact with foreigners visiting the United States - fully understand that the U.S. government restricts the flow of technical data and know-how, whether it be written, oral, or visual.

SAMA's Export Administration Act Task Group has compiled some detailed comments on each of these three areas, which have been mailed to all SAMA companies.

Another important action which we think should be taken immediately would improve the dialogue between leaders in the business community and those in the government responsbile for design and implementation of U.S. export control policy. Specifically, SAMA recommends that a meeting, with appropriate security clearance, be held between high-level members of the public and private sectors to discuss candidly the creation of a workable national security-related compliance system.

SAMA would support a committee of such high level business-government representatives which could be expected to hammer out workable, practical procedures to exclude export of key products and components and to manage decontrol at a pace consistent with technololgical advances here and abroad. Key members of the business community would be further sensitized to central problems of national security, and as active participants in the process, could be expected to provide constructive support in the execution of related discussions and policies. The government members, for their part, would gain a firsthand impression of business concerns, the state-of-the-art in the commercial sector, and the actual extent to which business can assist in the control process.

Finally, Mr. Chairman, it is obvious to us that it is essential for a great deal of cooperation to occur between the U.S. government and high technology exporters for any compliance program to be effective. In this connection, we are aware of the fact that the U.S. Customs Service has, for a number of years, offered a prior disclosure program for violations relating to importations. Up to this time, the Department of Commerce has not formally published any regulations with respect to prior disclosures of export violations.

SAMA believes the lack of formal voluntary disclosure procedures may result in a reluctance on the part of exporters to make disclosures of inadvertant violations of the Export Administration Regulations for fear of incurring severe penalties. SAMA believes that the government should adopt a voluntary disclosure policy so as to further encourage cooperation by the United States exporting community. In our view, such a policy could only enhance the government's ability to stem the export of high technology information and products from the United States and would be consistent with the current policy of the United States Customs Service and the current practice of the Department of Commerce.

Frankly, Mr. Chairman, there are some good arguments for the creation of a new, truly independent agency. The creation of such an agency might allow for a greater degree of accountability and predictability in the decision making process. Separate budgetary authority for an independent agency might also bring with it the substantially enhanced resources needed to implement and enforce an effective and efficient licensing program.

These are essentially operational arguments, however. The fact of the matter is that as the lead agency in administering U.S. export control policy, the Department of Commerce implements policy decisions which are established by the President and adhered to by all agencies in the government. Viewed in this context, we are not persuaded that the creation of a new independent agency would have any positive results, but we can see the real possibility of a very real disruption of the present system.

SAMA believes that there are more important issues than the actual location of export control responsibilities that need to be addressed. For example:

1. When can an accurate assessment of foreign availability be gained?

2. Can "militarily critical" be defined in a way that will protect our national security on the one hand by prohibiting our adversaries from obtaining these goods and technologies and on the other still allow U.S. high technology companies to compete effectively in world markets?

3. How can COCOM be strengthened?

4. How can non-COCOM countries be persuaded to join us in denying militarily critical technology and keystone equipment to the U.S.S.R. and its satellite countries?

Conclusion

Mr. Chairman, throughout my testimony, I have addressed the collective concerns of SAMA, it's member companies, and the Foxboro Company on the critical issues facing us and the Congress with the renewal of the Export Administration Act of 1979. At this opportune time, I would like to expand upon the Foxboro Company's experiences and subsequent heavy losses in dollars and market position as a result of the implementation of national security and unilateral foreign policy controls imposed under the Act. As a result of the embargo on computer, oil and natural gas applications technologies to the Soviet Union, in 1982 alone, the Foxboro Company has lost an estimated 17 million dollars in purchase orders. Our inability to obtain export licenses for our products has severely eroded our market position in the U.S.S.R.

In many instances, the Soviets are now instructing contractors and engineers on their projects not to specify U.S. suppliers in any quotation requests where comparable equipment can be obtained from non-U.S. suppliers. In our business, we have many foreign competitors who are suppliers of comparable process control systems and instrumentation who are reaping the harvest of our circumstances.

Additionally, the majority of construction and engineering firms dealing with the Soviets on major projects are European based, and as a result of their experiences with U.S. export controls vis-a-vis the Yamburg Pipeline project, these firms are now very hesitant to specify U.S. suppliers even [illegible]

Free World projects. Their apparent attitude is "why should we be concerned about the impact of U.S. export controls on our contracts? Let us specify non-U.S. origin equipment that will do the job and with considerably less government interference."

Due to the unilateral foreign policy controls on Libya, the Foxboro Company has been disqualified from bidding on projects for purchase orders totaling 3 million dollars. As with the Soviets, Libyan end-users have no problem in obtaining comparable products for their process control needs and are exercising this option.

Under such stringent foreign policy and national security controls, the Foxboro Company has incurred heavy losses in both dollars and market position. With the economic climate, as it exists today in the U.S., the excessive balance of payments deficit and the erosion of American business's reputation overseas as a reliable supplier, it is in all our best interests for the Congress to take the necessary steps to insure that U.S. export controls and fair and equitable.

Senator HEINZ. Mr. Gleason, thank you very much.
Mr. Gray?

STATEMENT OF JAMES A. GRAY, PRESIDENT, NATIONAL MACHINE TOOL BUILDERS ASSOCIATION

Mr. GRAY. Thank you, Mr. Chairman. My name is Jim Gray. I am president of the National Machine Tool Builders Assocation, a national trade association composed of approximately 400 member companies which account for over 85 percent of the U.S. machine tool production. With me today is Jim Mack, public affairs director. We certainly appreciate this opportunity to express our views concerning the renewal of the Export Administration Act, an issue which, as you know, has direct and a very substantial impact on the U.S. machine tool industry.

Our written testimony documents the serious and dangerous state of our industry. Our combined annual output fell from $5.1 billion in 1981 to $3.6 billion in 1982, a drop of nearly 30 percent. The 50-percent drop in new orders we experienced last year means that 1983 shipments will be even lower. The 1983 new order projections are also very dim.

IMPORT PENETRATION

This dramatic decline can, of course, be attributed in part to the worldwide recession, but the real culprit can be summed up in just two words: Import penetration. In recent years, our domestic machine tool industry has been invaded by foreign competition on a scale never before imagined. Last year, imports accounted for nearly 43 percent of the total U.S. machine tool consumption. Mr. Chairman, the fact that we are losing an increasingly larger share of our domestic market to imports each year is by itself cause for concern.

But even more distressing is the changing character of the market share. It is increasingly composed of more technologically advanced and defense-sensitive equipment, most of it coming from Japan under circumstances that would lead reasonable people to conclude that the Japanese are engaged in a concerted effort, subsidized directly by the Japanese Government, to penetrate and capture the U.S. machine tool market.

This rather grim outlook leads me to the second point I want to make. In light of the unprecedented problem of import penetration into our domestic market, the opportunity for U.S. machine tool builders to competitively export their products has become more critical than ever. Unfortunately, the U.S. machine tool industry is no exception to our Nation's overall declining share of the world export market.

Our portion of the world's machine tool exports has fallen from 21 percent in 1964 to just 6.7 percent in 1982, placing us well behind West Germany, with 24.2 percent; and Japan, whose share of the world market has tripled since 1972 to 13.4 percent last year. We believe that our export performance can, and that it must, be improved. The degree to which that improvement takes place depends in large measure on the criteria which determine the application of export controls. NMTBA's position on this complex subject and the legislation which has been introduced to deal with it is fully documented in our written submission to the committee.

I would just like to focus here on some key points of particular concern to us. Let me say right up front that NMTBA continues to oppose any trade-related activity which would permit our adversaries to significantly and directly increase their military capabilities. This committee is well aware that Cocom was established to insure parallel controls within the West over exports of militarily critical products and technology.

Now, our written statement indicates that, unfortunately, many of our Cocom allies have adopted a decidedly more flexible interpretation of previously agreed-upon controls than we have, and are engaged in often blatant violations of agreements which are allegedly multilateral.

It may interest you to know, Mr. Chairman, that in 1981 the Soviet Union imported approximately 1 billion dollar's worth of machine tools. The United States supplied only 17 million of that market. Clearly, if there is a leakage of machine tool technology, it most assuredly is not coming from the United States. Practices such as these are coming at a time when the strength of Cocom needs to be reinforced, not undermined.

The situation demands that our Government send a strong and unmistakable signal to these violators that such conduct will not be tolerated. In that regard, we suggest that the national security export controls should be examined to require the imposition of import controls on companies, and in certain instances, governments, which patently and persistently disregard Cocom guidelines and other alliance-wide trade restrictions. I was delighted to hear Mr. Perle express sympathy with this approach, this morning.

When the United States complies with Cocom regulations, but its allies do not, export controls actually work to the detriment of the security of the free world in two ways. First, Soviet access to militarily critical items is not denied. Second, our own critical industrial base is imperiled because the economies of scale utilized by our Cocom-violating competitors allow them to not only capitalize on the export market, but also to flood our domestic market with imports.

If national security controls are to be effective, they must be sensible. Therefore, we prefer that the Commodity Control List should be more frequently updated in order to add new items to the list and to remove outdated items, as dictated by technical developments. This can be achieved either through indexing or through some more frequent Cocom list review.

We also believe that the criteria should be changed so that the controlled item must make a direct as well as a significant contribution to the military capability of a potential adversary. Theoretically, any export could make an indirect contribution. Unilateral national security controls should be eliminated on products where there is a history of U.S. approvals in significant numbers. In addition, the act should be amended to prohibit validated license controls on strategic products to Cocom and other countries which provide controls and enforcement parallel to that of the United States.

With regard to the issue of foreign availability, we support Senator Heinz' proposal that the licensing authorities should be required to submit more frequent extensive reports to Congress. We also endorse his provision that with regard to export license applications under both national security and foreign policy controls, the Government shall accept applicants' assertion of foreign availability unless able to present evidence to the contrary.

We strongly support Senator Heinz' proposal that the same foreign availability test applied to national security controls be applied to foreign policy controls. Although we generally question the effectiveness of using trade as a weapon, we recognize that there are perhaps occasions in which it may be appropriate to make international statements by imposing foreign policy controls on selected exports. In that regard, we agree with Senator Heinz that Congress should be consulted prior to the imposition of such controls.

As Senator Heinz suggests, new foreign policy controls should only have a prospective effect on existing contracts. Retroactive applications should be prohibited. If in the judgment of this committee the sanctity of existing contracts cannot be maintained, a compensation or insurance mechanism should be established to protect U.S. producers of controlled items.

We also believe that new foreign policy controls should not be applied to the foreign subsidiaries or licensees of U.S. companies solely on the basis of intercorporate relationships.

PROPOSED OFFICE OF STRATEGIC TRADE

With regard to administration of export controls, we see no inherent problems with Senator Garn's proposal to establish an Office of Strategic Trade, although we do not consider this to be a panacea for the ills of the export control program, because we have long maintained that the criteria for imposing controls are more important than which agency administers them.

However, we believe that the Defense Department already has sufficient authority to prevent shipment of items which will enhance the military capability of a potential adversary.

Therefore, we join Senator Garn in opposing the transfer of any further authority to DOD in the licensing process. We have no objection to transferring the EAA's enforcement function from the Commerce Department to the Customs Service, as Senator Heinz has proposed. However, the competition which currently exists between the two agencies is counterproductive and should be eliminated.

I know my time is up, Mr. Chairman, so just one final point.

The imposition of export controls for purposes of national security or foreign policy curtails not only the ability of our members to transfer the items restricted by such controls but, increasingly, their ability to market equipment which is not restricted. Our members report that potential and often lucrative markets are lost to them because of the perception overseas that the United States, with its well-known propensity for light switch diplomacy, could impose controls at virtually any time without any warning.

Without question, the uncertainty and unpredictability of this situation hinder the ability of our members to export to the world market on a competitive basis. For example, our members frequently find themselves unable to answer with any assurance such reasonable questions as, "Will spare parts, replacement machinery, and service personnel be readily available?"

We urge that in light of this perspective export controls be applied as pragmatically as possible. It must be recognized that controls can have a long-term, unintended, and perhaps unforeseen effect on the export capabilities of American manufacturers and ultimately the national security of the United States.

Thank you, Mr. Chairman.

[The complete statement follows:]

STATEMENT BY
JAMES A. GRAY
PRESIDENT
NATIONAL MACHINE TOOL BUILDERS' ASSOCIATION
BEFORE THE
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
UNITED STATES SENATE
MARCH 2, 1983

I. INTRODUCTION

Good morning, my name is James A. Gray. I am President of the National Machine Tool Builders' Association (NMTBA), a national trade association comprised of approximately 400 member companies which account for nearly 85% of United States machine tool production. With me today is James H. Mack, Public Affairs Director at NMTBA.

Mr. Chairman, we certainly appreciate this opportunity to express our views concerning renewal of the Export Administration Act -- an issue which, as you know, has direct and very substantial impact on the U.S. machine tool industry. We commend your many initiatives in this area, including the introduction of S. 434, the Office of Strategic Trade Act of 1983. In the same vein, we commend Senator Heinz for his introduction of S. 397, which makes a significant contribution to the sensible administration of export control policy. The long-standing familiarity of both you and Senator Heinz with the administration of export controls, along with your willingness to explore all sides of the question, have established a sound and credible basis for constructive dialogue concerning U.S. export policy. We are very pleased to be a part of that dialogue.

A. The U.S. Machine Tool Industry Today

Before proceeding with our comments concerning export legislation, we would like to offer the Committee a brief overview of the U.S. machine tool industry and where it is today. NMTBA represents those in the business of manufacturing the tools of metalworking productivity, including machine tools, cutting, grinding and forming machines, electrical and electronic controls, universal measuring machines, and automated production systems. The American machine tool industry accounts for a very basic and strategic segment of the U.S. defense-industrial base -- this is the industry that builds the machines that are the foundation of our military readiness and our ability to respond in the event of a national emergency.

For the U.S. machine tool industry, 1981 and 1982 were years of retrenchment -- sustained decline following six years of strength. One of the most accurate indicators of the severity of the decline is the industry's rate of new order acquisition. After experiencing virtually uninterrupted growth from mid-1975 through mid-1980, orders for new machine tools (both metal cutting and metal forming) at first leveled off and then began a cyclical decline as the nation's economy slipped further into recession.

The unexpected extremity of the 1981-82 recession, especially in such major markets for machine tools as the automotive, aerospace, farm implement, and construction equipment industries, led to a decline in net new orders of nearly 50% in 1982 -- following a drop of 37% in 1981.[1] The cumulative collapse in U.S. orders, from the peak in early 1979, is a staggering 81%. Unfortunately, industry analysts predict that the outlook for 1983 will be equally unpromising. Our most recent data indicate that net new orders for January, 1983 were 55% below those for January, 1982.

Shipments and employment have also dropped dramatically. Unfortunately, because of the time that is required to build capital equipment like machine tools, shipments necessarily follow orders. Thus, although shipments fell about 30% -- from $5.1 billion in 1981 to $3.6 billion in 1982 -- they will continue to decline in 1983, because of the drop in orders.

In December 1975, at the bottom of the last recession, the total employment in the industry was 82,800. Five years later, at the peak of the next cycle in May of 1980, the industry's employment had grown to 110,000. Since then, however, employment has fallen sharply to 68,600 as of December, 1982, the latest month for which figures are available. This represents a 37.6% decline in employment -- a loss of more than 41,000 jobs -- in less than two and a half years. Total employment thus stands at a level substantially below the level that was reached at the bottom of the last cycle.

It is particularly interesting to note that the decline in employment of production workers is greater than the decline in overall employment and has reached into the ranks of workers with relatively high levels of seniority and competence. Industry management is deeply concerned about the implications of this development for the industry's competitive position. The quality of our industry's products depends to a substantial extent on the competence of its production workers. Skilled production workers who are laid off and then find other jobs will be reluctant to return to a cyclical industry that is, as documented below, seriously threatened by imports. Efficiency and quality are likely to suffer, thereby further eroding our industry's competitive posture.

---

[1] For purposes of this statement, values are based on current dollars.

B. Machine Tool Imports: Penetration On An Unprecedented Scale

There are several factors to be considered when assessing the status of the U.S. machine tool industry. Clearly, the recent economic downturn and the decline in the nation's rate of capital spending resulting from it have played a significant role. Even more significant, however, is the phenomenal influx of imported machine tools. Since 1964, America's imports of foreign machine tools have increased seven-fold from 4.5% of total consumption 19 years ago to 35.3% in 1982, based on value. (Exhibit I) As a share of units (that is, machines actually installed), imports accounted for nearly 43% of U.S. consumption in the first three quarters of 1982. During this period, orders for U.S. machine tools fell 50%.

As as result of the rising tide of imports, the machine tool industry's balance of trade was negative for the first time in history in 1978. In 1979 the trade deficit reached $400 million; $513 million in 1980; $455 million in 1981. The industry suffered its fifth straight year of negative trade balance in 1982 with a deficit of $638 million. (Exhibit II)

We are not suggesting that import sales in our domestic market are a new phenomenon. However, both the level and the character of these sales, particularly within the last several years, is unquestionably alarming. Exhibit III. for example, clearly illustrtes the dramatic jump in the value of foreign machine tools sold in the United States between 1977 and 1981. Japan's machine tool shipments to the United States increased substantially during this period (both in terms of actual dollar value and in terms of relative market share), more than quadrupling since 1977. Exhibit IV, detailing Japan's top ten machine tool markets for the years 1976 and 1981, shows that in 1976, the United States market accounted for 22.4% of all machine tools exported from Japan. (Even at this point, American purchases comprised the single largest export market for Japanese machine tool builders, with the Republic of Korea second at 19.1%.) By 1981, almost half of the machine tools exported from Japan were destined for American buyers -- more than eight times the volume sold to West Germany, the second largest Japanese foreign market in 1981.

The fact that we are losing an increasingly larger share of our domestic machine tool market to imports each year is, by itself, cause for concern. But perhaps even more disturbing is the changing character of that market share -- it is increasingly comprised of more technologically advanced and defense-sensitive equipment. (Exhibit V) During the first half of 1982, imports, based on value, accounted for 53.3% of the numerically controlled (NC) lathes, 42.7% of NC machining centers, 43.9% of forging machines, and 32.7% of the boring machines purchased in the United States. Japan's share of these high technology imports was substantial -- for the first half of 1982, 78.9% of the Japanese metal cutting machines exports to the U.S. consisted of equipment with sophisticated numerical controls. Japanese exports of high technology machining centers to the United States have increased dramatically over the past several years to where they totaled more than $168 million in the first half of 1982.

It is interesting to note that these very same product lines -- computer controlled metal cutting machines -- have been identified by the Defense Department as the most critical to the production of weapons systems (and thus subject to the most extensive export controls). This leads one to the inescapable conclusion that our vital defense base is being eroded and threatened by imports.

The Japanese targeting of the U.S. machine tool industry is a major factor influencing the unprecedented import invasion. Last December, the Senate recognized this problem by adopting a sense-of-the-Senate resolution urging the President to deny the investment tax credit applied to certain Japanese machine tools, based upon Japanese targeting practices. The resolution was co-sponsored by 26 Senators, including the Chairman and six members of this Committee.

In addition, the Japanese and others continue to ship machine tools to Communist countries (despite the COCOM proscriptions), enabling them to achieve greater competitiveness in the U.S. market. The national security implications for the United States are obvious. NMTBA believes that the current levels of high technology imports cannot be tolerated, particularly when this startling trend shows every sign of escalating.

II. THE ABILITY TO ENTER AND REMAIN IN THE WORLD EXPORT MARKET IS VITALLY IMPORTANT TO AMERICAN MANUFACTURERS -- INCLUDING MACHINE TOOL BUILDERS. HOWEVER, U.S. EXPORT PERFORMANCE HAS SHARPLY ERODED IN RECENT YEARS.

A. The Significance Of A Strong Export Market

The strength of our nation's economy depends, in large measure, on a thriving export market for American products. A more stable dollar, reduction of the spiraling federal deficit, and the creation of jobs[2] are inextricably linked to healthy export performance. In addition, the international influence and prestige of the United States can only be enhanced by prolific export activity.

---

[2] One out of every seven U.S. jobs is export-dependent.

Later in this statement, we will document the importance of exports to the continued health of the U.S. machine tool industry. These data indicate that while the U.S. market is subject to wide cyclical fluctuations, the world machine tool market reflects a pattern of steady growth. These data also show that approximately half the consumption of machine tools outside the United States exists in the Communist countries. Thus, unless export controls are applied multilaterally to the Communist countries, the U.S. machine tool industry is placed at a severe competitive disadvantage -- at home and abroad.

For the U.S. machine tool industry, the vigorous expansion of export markets has always been a primary objective. In light of the current levels of import penetration, however, the industry's ability to export on a competitive basis has become absolutely essential. Given the importance of export activity to America's machine tool builders and our problems with government-imposed limitations on exports, we feel it is appropriate to briefly apprise the Committee of the ongoing export promotion efforts undertaken by NMTBA and its member companies.

B. Export Promotion Activities Sponsored By NMTBA

NMTBA, on behalf of the American machine tool industry, is devoting its own resources to the development and maintenance of international markets around the world. The Association has three full time staff directors who spend virtually their full time overseas promoting U.S. machine tool exports, with considerable assistance from the Department of Commerce.

NMTBA develops seminars and workshops to train our members' marketing and service personnel on all aspects of international trade. We conduct market research analysis to identify promising markets for industry development. We have conducted more than 40 Industry-Organized, Government-Approved (IOGA) overseas promotional activities to help establish a viable foothold in these new markets; approximately 15 major promotional events (including catalogue shows and international trade fairs) are planned for 1983. We sponsor foreign exhibitions so that our members will have more opportunities to display their products overseas. We organize reverse trade missions to bring foreign buyers to our members' plants. And we bring large groups of foreign visitors to the International Machine Tool Show in Chicago every two years. In 1982, we attracted more than 5,600 foreign visitors -- despite the depressed economic climate. The Commerce Department has worked closely with us in the development and implementation of these programs, as have the commercial officers in our trade centers and embassies throughout the world.

One year ago, we concluded the most extensive machine tool show ever held in Mexico. (In 1981, Mexico surpassed Canada to become the U.S. machine tool industry's largest export market.) The show, held in conjunction with the Commerce Department and the U.S. Trade Center staff in Mexico City, was a resounding success. Despite the severe devaluation of the peso, the show registered more than 4,000 potential end-users of American machine tools and nearly $3 million in equipment was purchased directly off the show floor.

Later this month in Beijing, we will begin the first formal exhibition of American machine tools ever held in the People's Republic of China.

C. The Export Outlook For The U.S.

Having acknowledged the importance of sustained export activity, it is discouraging to note that in fact, overall U.S. export performance is unmistakably on the decline -- since 1960, the U.S. share of manufactured exports has slid from 22.8% to 6.7% of the world total. This decline is evidenced by a rapidly mounting trade deficit (the Department of Commerce estimates a staggering $31.8 billion in 1982) and indications that the competitive edge traditionally held by American industry is steadily slipping away. While countries like West Germany export 36% of its gross national product (Canada, 27%; the United Kingdom, 22%), the United States consumes all but 18% of domestic production. Recent statistics indicate that a mere 4% of this country's 350,000 manufacturers market their products abroad and, of those, 200 industrial "heavyweights" account for almost 80% of all U.S. exports.

Unfortunately, the U.S. machine tool industry is no exception to our nation's declining share of the world export market. When we look at the dollar value of machine tool exports, the results appear to be encouraging. But when we view our exports as a percentage of all machine tool exports worldwide, the results indicate that our industry's share of the international marketplace has seriously eroded over the past 20 years. The U.S. portion of the world's machine tool exports fell from 21% in 1964 to just

6.7% in 1982, placing us well behind West Germany (24.2%) and Japan (13.4%) as a machine tool exporting nation.

Consider that in the mid-1960's, American machine tool builders supplied approximately one-third of the total global market. In other words, one out of every three machine tools consumed in the world (including the U.S.) was a product of our domestic machine tool industry. By the end of 1982, however, that portion had fallen to only one in six. Certainly the overwhelming invasion of our domestic market by foreign competition has contributed heavily to this dramatic decline. However, this startling reduction can also be attributed to our industry's substantial loss of world export market share.

D. The Export Outlook For Our Foreign Competitors

While the U.S. machine tool industry's percentage share of the world export market has oscillated since 1972 with a net decline of about 8%, Japan's percentage share has increased threefold over the past ten years. Exhibit VI illustrates that Japan's substantial increase during this period has also cut into the percentage share of West Germany, the perennial front-runner in machine tool exports. West Germany, while still the leader, has seen its percentage share of the world export market decline by 12.3% since 1972.

Machine tool exports to Eastern Europe and the Soviet Union also indicate some very revealing trends. In the early 1970's, the U.S. established itself as a machine tool exporter to Eastern Europe. From 1970-75, U.S. exports to the Eastern Bloc countries increased from $7.5 million to $99.4 million, an average annual growth of 68%. (Exhibit VII) From the peak in 1975, however, our exports fell to $20.3 million in 1981 -- about where we had been in 1972.[3]

By contrast, the other major Western suppliers (Japan, West Germany, Italy, France and Switzerland) increased their share of total machine tool exports to Eastern Europe -- beginning in 1975. (Exhibit VIII) In 1975, these countries accounted for 77% of Eastern Bloc machine tool imports; by the end of 1979,[4] that proportion had increased to 88%. Interestingly, this 11% gain approximates the U.S. share of Eastern Bloc machine tool imports in 1975. (From 1975 to 1979, the U.S. share of imports to this region fell from 11.3% to 1.5%.) Obviously, our Western competitors (and, with the exception of Switzerland, fellow COCOM members) took up the slack created by our relative absence from the East European market during those years.[5]

Consistent with its pattern of machine tool exports to Eastern Europe, U.S. shipments to the Soviet Union declined following a peak in 1975 when $89.1 million in U.S. equipment entered the Soviet market -- 15.7% of total U.S. machine tool exports that year. By 1982, we were exporting only $1.1 million in machine tools (.2% of our total export market) to the Soviets -- a cumulative decline of 98% over the seven year period; an average annual decline of 25%.

---

[3] The start of this decline roughly coincides with the beginning of U.S. participation in COCOM and the attendant imposition of national security controls on U.S. products.

[4] The most recent year for which complete data are available.

[5] Preliminary data indicate that shipments of U.S. machine tools to Eastern Europe remained in the range of 1-2% of the region's total imports for 1980-82.

Although information is sketchy with regard to the Soviet Union's machine tool imports from other suppliers, we do know that the U.S.S.R. is high dependent upon West Germany for imports of NC turning machines. (Exhibit IX) Exhibit IX also indicates that Japan is a primary source of the Soviets' machining centers. (The table shows that by comparison, the U.S. is definitely not a factor in Soviet imports of NC machinery.)

E. The Decline in U.S. Export Performance

The reasons for the decline in U.S. export performance (both generally and specifically with regard to the machine tool industry) are varied and complex. Certainly, contributing factors include: the worldwide recession, the inability of U.S. firms to be price competitive in overseas markets, lack of capital investment here at home, and the fact that the United States is consistently lagging behind its competitors in expenditures for export promotion and research and development.[6] It is also true that many

---

[6] Senator John Glenn recently noted that while R & D expenditures in the U.S. (as a proportion of GNP) have declined by 20% since 1964, West Germany, Japan and the Soviet Union have significantly increased the proportion of their GNP's devoted to R & D investment -- by 46%, 32% and 30%, respectively.

American manufacturers have been reluctant to enter what they perceive to be the complex and overwhelming world of international trade. (In that regard, however, we are confident that the Export Trading Company Act (P.L. 97-290), favorably reported by this Committee in 1981 and signed into law last October, will assist in providing sorely needed incentives for small and medium-sized businesses to enter the export market.)

In addition, NMTBA believes that, in certain instances, our government's uneven and often ill-considered application of export controls must also be recognized as an impediment (albeit unintended) to the export prospects of those who manufacture and market American products. We will share with the Committee why this is so.

III. THE EXPORT ADMINISTRATION ACT

We have demonstrated that the opportunity to export on a competitive basis is crucial to the U.S. machine tool industry. We believe that our export performance can -- that it must -- be improved. The degree to which that improvement takes place depends in no small part on the criteria, set forth in the Export Administration Act of 1979 (E.A.A.), which determine the application of export controls. The Act, as you know, expires at the end of this fiscal year. We view the reauthorization process as a welcome opportunity to acknowledge the progress which has been made and to identify those areas where further adjustments may be desirable, and in fact, necessary.

Mr. Chairman, our members report that overall, distinct improvements have been made in the general export licensing system since enactment of the E.A.A. four years ago -- particularly with regard to the notorious delays which plagued the system prior to 1979. While we genuinely appreciate the significant changes that have been made in that regard, we firmly believe that further refinements, enumerated below, will improve the current law.

A. Administration of the Act

Mr. Chairman, we see no inherent problem with your proposal to establish an Office of Strategic Trade (Sec. 5(a)(1) of S. 434), although we do not consider this to be a panacea for the ills of the export control program. We have long maintained that the statutory criteria for imposing export controls (and the philosophy of those who implement them) are more important than which agency administers such controls. However, we believe that the Department of Defense already has sufficient authority under the current Act to prevent shipments of items which will enhance the military capability of a potential adversary. Therefore, we join you in opposing the transfer of any further authority to the DOD with regard to the licensing process.

We do not object to the transfer of the Act's enforcement function from the Department of Commerce to the U.S. Customs Service, as proposed by Senator Heinz in Sec. 4(a) of S. 397, the Export Administration Act Amendments of 1983. However, the competition which currently exists between the two agencies is counterproductive and should be eliminated.

We strongly support Senator Heinz' proposal that the current suspense points and overall 90-day time limitation on licensing decisions should be reduced, across-the-board, by one-third. (Sec. 10 of S. 397) However, we believe that this step requires a greater commitment of resources to the staffing of export control agencies with competent personnel who have substantial technical expertise in the area they are charged with overseeing. The Defense Department, for example, is woefully lacking in such technical expertise in our particular area of concern -- machine tools.

B. National Security Controls

Machine tools have long been recognized as essential to military production. Therefore, controls imposed for purposes of national security have a direct and often substantial impact on our members' ability to export much of the equipment they manufacture.

NMTBA recognizes that our nation's ability to maintain a defense-industrial edge over its potential adversaries is absolutely essential. In that regard, we continue to adamantly oppose any trade-related activity which would permit our adversaries to significantly and directly increase their military capabilities.

The Committee is well aware that COCOM was established to ensure a degree of uniformity among the major Western trading nations' policies concerning the transfer of militarily critical technology. Unfortunately, many of our COCOM allies have adopted a decidedly more flexible interpretatin of export controls than we have -- and, in fact, are engaging in sometimes blatant violation of agreements which are allegedly multi-lateral.

Consider, for example, that approximately 25% of the world market (about half of the market outside the U.S.) for machine tools lies in the Communist countries. In 1981, the Soviet Union imported $1 billion worth of machine tools; the United States supplied only $17 million of that market. U.S. machine tool builders, then, are effectively denied access to about half of their potential export market. But comparable equipment, manufactured by other COCOM members, enters the Communist countries in clear violation of COCOM regulations. In 1981, for example, 88% of the machine tools going into the Soviet Union came from Western allies (and fellow COCOM members); the U.S. share accounted for approximately 1.5%.

Although not all of these shipments were in violation of COCOM agreements, it is significant that the average unit value of the machining centers exported by Japan to the Soviet Union between 1979 and 1981 ($172,000 in 1979; $160,500 in 1980; $212,650 in 1981) was substantially higher than the average unit value of total machining center production during those years ($94,950; $93,900; and $101,400 respectively). Clearly, machining centers of this value are highly sophisticated pieces of metalworking equipment and many were of the type which our members would be prevented from shipping.

Clearly, Mr. Chairman, if there is a leakage of machine tool technology to the Soviet Union, it most assuredly is not coming from us -- a fact that the Soviets themselves have acknowledged. Commenting last month on the likelihood that Soviet orders for machinery and related equipment from the U.S. would be even lower this year, an economist with the Soviet Ministry of Foreign Trade remarked: "Our image of the U.S. is not as an industrial nation, but as a supplier of farm products."[7] In that regard, an American representative of a U.S. international trading concern located in Moscow recently observed that "in fact, the Soviets have found alternate sources of supply [for machinery] and will be reluctant to ditch their new trading partners."[8]

The People's Republic of China provides another example of COCOM non-compliance. Chinese manufacturers (potential end-users of American machine tools) have visited our members' plants, only to find that export licenses could not be issued for the equipment they wished to purchase. Consequently, their orders were filled elsewhere -- by other COCOM members.

Practices such as these -- increasingly widespread -- are coming at a time when the strength of COCOM needs to be reinforced, not undermined. This situation demands that our government send a strong and unmistakable signal indicating that such conduct will not be tolerated. NTMBA believes the most effective means of communicating that message is by imposing import controls on companies (and, in certain instances, governments) which patently and persistently disregard COCOM regulations and/or other alliance-wide trade restrictions. We suggest, therefore, that national security export controls (Sec. 5 of the E.A.A.) be expanded to authorize, at the President's discretion, the restriction of imports into the U.S. as a means of deterring willful violations of COCOM agreements by our allies, who are committed to uphold their obligations to deny potential adversaries the access to militarily critical items.

---

[7] "Cash-Short Soviets Cool to U.S. Firms, But Moscow Nurtures Other Trade Ties," The Wall Street Journal, February 16, 1983, p. 34.

[8] Id.

Mr. Chairman, when the U.S. complies with COCOM regulations, but our allies do not, export controls actually work to the detriment of the security of the free world -- in two ways. First, Communist Bloc access to militarily critical items is not denied. Second, our own critical industrial base is imperiled because the economies of scale utilized by our COCOM-violating competitors allow them not only to capitalize on the export market, but to flood our domestic market with imports as well.

Statutory authority which allows the President to impose import restrictions under conditions which threaten to erode our nation's defense posture is clearly consistent with Article XXI of the General Agreement on Tariffs and Trade (GATT), which provides that:

> "[n]othing is this Agreement shall be construed . . . (b) to prevent any contracting party from taking *any action which it considers necessary for the protection of its essential security interest* . . . (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment. . . . " (Emphasis added.)

As Professor Jackson has observed, this "language explicitly gives the right of determining necessity to each individual government."[9] Moreover, "[d]uring the discussion in the original GATT section, it was stated that 'every country must have the last resort on questions relating to its own security.'"[10]

With regard to the criteria by which national security controls are applied, NMTBA recommends that Section 3(2)(A) of the E.A.A. be amended so that the controls could be imposed only if an item would make "a *direct* and significant contribution" to the military potential of an adversary. (Emphasis added.) Therefore, we respectfully oppose your suggestion, Mr. Chairman, that the current language requiring that items be controlled which "would" make a significant contribution to the military capability of a potential adversary be changed to require the control of items which "could" make such a contribution. (Sec. 3(2)(A) of S. 434) We believe that your proposed change would broaden unnecessarily the scope of those items subject to control, and would also be extraordinarily difficult to implement -- conceivably, almost anything "could" enhance the defense posture of a potential adversary. It has been said, for example, that a modern army cannot fight a war without paper cups.

---

[9] J. Jackson, *World Trade and the Law of GATT* § 28.4 at 748.

[10] *Id*. at 749, quoting GATT Doc. Cp.3/20, at 3 (1949).

We also recommend that the Act be amended to prohibit validated license controls on exports of strategic products to COCOM and other countries which provide controls and enforcement parallel to that of the United States. New controls on free-world technology transfers should be accompanied by removal of validated license controls on exports to the COCOM countries of the products that are the result of that technology. However, re-export controls could be maintained.

In addition, unilateral national security controls should be eliminated on products where there is a history of consistent U.S. approvals in significant numbers. New unilateral controls should be prohibited, except under extraordinary circumstances. (Any new unilateral control so imposed should automatically expire after one year, unless COCOM adopts that control.)

The threshold for distribution licenses should be lowered, with wider use by the Commerce Department encouraged. We support Senator Heinz' recommendation that a new comprehensive operations license for intercorporate technology transfers (or transfers to foreign licensees) be established. We also endorse his proposal which strengthens the authority for the issuance of qualified general licenses for items not requiring COCOM approval. (Sec. 17 of S. 397).

Section 5(h) of the E.A.A., defining the role of technical advisory committees, should be maintained in its entirety -- not cut back, as the Chairman has proposed.

C. Commodity Control List

Legislative or Committee Report language should mandate indexing or other methods of "policing" the Commodity Control List (CCL) as technology becomes obsolete. An indexing mechanism which provides for frequent list reviews is an essential prerequisite for the realistic imposition of export controls. In this regard, it would be useful to establish a national center for technical expertise, which could be called on to evaluate items of high technical complexity, as well as questions relating to foreign availability. For this reason, Mr. Chairman, we must respectfully oppose the provision in S. 434 which repeals Section 5(g) of the E.A.A. mandating the indexing, where possible, of the CCL.

An effective indexing system should work both to remove technologies and products from the CCL as their usage becomes commonplace worldwide and to add new militarily critical technologies and products as they develop.

Unfortunately, the current practice does not work this way. For example, many three axis machine tools remain on the CCL, even though they are no longer regarded (here or abroad) as "state-of-the-art" manufacturing technology. This leads to widespread avoidance of multilateral export controls by our COCOM allies, who are decidedly less literal in their interpretation of the COCOM list than is our own government, which either denies license applications for the shipments of these products or engages in the delay-ridden process of seeking exception requests for their export from COCOM. The fact that our allies do not often avail themselves of the COCOM exception request process does not mean that they do not export proscribed items -- it means that they have simply engaged in their own form of list-indexation and have shipped items to our potential adversaries, based on their own interpretations of the impact of technological change on the list's intended purpose.

By the same token, items are not included on the COCOM list, simply because they were developed after the list was developed. Robotics is a good example. It may shock the Committee to learn that industrial robots are not included on the COCOM list. U.S. efforts to include them in the current COCOM list review are, we understand, being vigorously resisted by Japan. An indexing system would have included them a long time ago.

The advantages of indexing could alternatively be achieved, if COCOM list reviews would be conducted on a continual basis, instead of the tri-annual basis currently mandated by the E.A.A. In either case, technologies and products could be systematically added and removed from the Commodity Control List in a manner which would distinctly enhance the effective enforcement of the list's proscriptions by all parties concerned.

D. Foreign Availability

NMTBA endorses Senator Heinz' proposal requiring licensing authorities to submit more frequent and extensive reports to the Congress regarding the government's efforts to assess foreign availability. (Sec. 2(d) of S. 397) This provision will help ensure that determinations of foreign availability will be more accurate -- and more timely.

We also endorse his proposal that, with regard to export license applications under both national security and foreign policy controls, the government shall accept applicant's assertions of foreign availability, unless able to present evidence to the contrary. (Sec. 2(c)(4) of S. 397) This provision strikes us as eminently reasonable. Our members have, in the past, submitted the catalogues of foreign manufacturers, as well as articles and pictures from trade journals, with their license applications. The U.S. government has considered this material inadequate for purposes of proving foreign availability. Numerous executives from our member companies, upon returning from visits to factories in the controlled countries, have offered to submit sworn affidavits attesting to the equipment they have seen installed in these countries. The U.S. agencies involved with processing the licenses have never seriously considered that such affidavits might help establish foreign availability and, consequently, have never asked for them. As Senator Heinz noted when introducing S. 397, this provision will ensure that "business assertions will no longer simply be simply dismissed."

E. Foreign Policy Controls

We generally question the effectiveness of using trade as a "weapon". However, we recognize that there are perhaps occasions in which it may be appropriate to make international statements of policy by imposing foreign policy controls on selected exports. In that regard, we agree with Senator Heinz that Congress should be consulted prior to the imposition of controls to assure the soundness of such action.

NMTBA supports the changes proposed by Senator Heinz concerning the criteria for imposing foreign policy controls. (Sec. 7 of S. 397) Moving from the current requirement that the President "consider" certain factors before imposing new controls to a requirement that he "determine" these factors represents a vast improvement over the present law. This provision requires that controls may only be imposed if the President determines, for example, that the controls will achieve the intended foreign policy objective, and that other countries will support the imposition or expansion of the controls. Senator Heinz has observed that this provision effectively places "the burden of proof on the President for justifying controls." We agree, and feel that his comment reflects a fundamentally sound analysis.

NMTBA supports the suggestion that foreign policy sanctions should be expanded by authorizing the imposition of import controls on appropriate products from the controlled country. Such action would effectively put "bite" into the controls. Under the current Act, if the U.S. imposed foreign policy controls on machine tool exports to Libya, for example, Libyan oil could still be imported to this country. It is illogical that while American machine tool builders would be denied access to Libyan markets, the revenue generated from the sale of Libyan oil in the U.S. could be used to purchase machine tools somewhere else.

As Senator Heinz suggests, new foreign policy controls should have only a prospective effect on thos contractual agreements existing at the time the controls are imposed -- retroactive application should be prohibited. (Sec. 15 of S. 397) If, however, in the judgment of this Committee, the sanctity of existing contracts cannot be maintained, a compensation or insurance mechanism should be established to protect U.S. producers of controlled items against the risk of contract interruption brought about by the imposition of new foreign policy controls. Currently, such insurance is not readily available on the commercial insurance market.

The well-being and development of U.S. foreign investments and commerce should be a primary objective of U.S. trade policy. The extra-territorial application of U.S. export controls to foreign subsidiaries clearly interferes with the accomplishment of that objective. Therefore, we believe that new foreign policy controls should not be applied to the foreign subsidiaries or licensees of U.S. companies, solely on the basis of inter-corporate relationships. We urge the inclusion of such a provision in the legislation ultimately reported by the Committee.

We wholeheartedly endorse Senator Heinz' proposal that the same foreign availability test currently applied to national security controls should be applied to foreign policy controls (Sec. 2(c) of S. 397) -- thereby creating a far more stringent test for the application of foreign policy controls when there are credible indications of foreign availability.

Finally, NMTBA appreciates Senator Heinz' proposal strengthening the role played by American business in the development of export policy by increasing the degree to which industry sector advisory committees must be consulted prior to the imposition of foreign policy controls. (Sec. 9 of S. 397)

F. Treaty Status of COCOM

NMTBA supports efforts to elevate COCOM to treaty status and to expand its coverage to other countries through multilateral or bilateral agreements. We believe that such efforts would strengthen multilateral compliance with national security controls, and would also establish a sound basis for the development of multilateral agreements regarding the imposition of foreign policy controls.

G. Enforcement of the Act

We support making it a criminal offense (1) to possess restricted items with the intent to illegally export and (2) to conspire to illegally export restricted items. Voluntary disclosures of inadvertent violations should, however, be taken into account when penalties are assessed. As a trade-off, penalties for willful violations might be increased.

In addition, the Commerce Department should accompany license denials with sufficient information upon which to base an appeal.

IV. CONCLUSION

Mr. Chairman, we have presented some rather startling evidence here this morning with regard to the declining competitive posture of the U.S. machine tool industry and the erosion of our defense industrial base. However, we hope that nothing we have said has conveyed the impression that our industry is neither capable or willing to compete. On the contrary, we believe that American machine tool builders have what it takes to meet competitive challenges from overseas. Today, our members are producing machines that can do many times the work of previous generations of machines -- with greater speed, accuracy and economy. Computerization, robotics and other new automation technology have laid the foundation for significant gains in the years ahead. But to realize these gains and to pass them on to our defense base, American industry must have the opportunity to compete on equal footing. That is all we ask.

In this regard, we ask you to keep in mind that the unnecessary imposition of export controls, particularly in the face of foreign availability, curtails not only the ability of our members to transfer the items restricted by such controls, but, increasingly, their ability to market equipment which is not restricted. Our members report that, potential and often lucrative markets are lost to them because of the perception overseas that the U.S., with its well-known propensity for "light switch" diplomacy, could impose controls at virtually any time and without any warning. Without question, the uncertainty and unpredictability of this situation hinder the ability of our members to export to the world market on a competitive basis. For example, our members frequently find themselves unable to answer, with any assurance, such reasonable questions as, "Will spare parts, replacement machinery, and service personnel be readily available?"

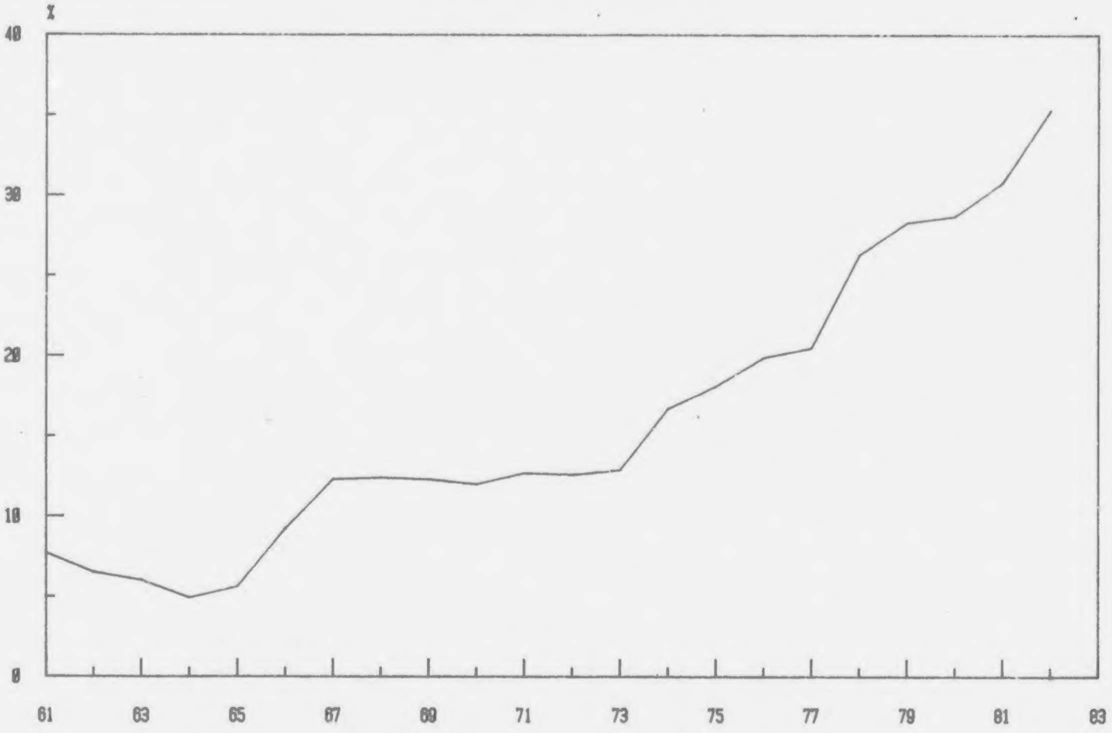
We have also demonstrated that the unilateral application of export controls also strengthens the ability of our foreign competitors to market their products in the United States -- thereby weakening the national security those controls were intended to preserve.

We urge, therefore, that in light of this perspective, export controls be applied as pragmatically as possible, with a view toward recognizing the long-term (and perhaps unforeseen) effect of those controls on the export capabilities of American manufacturers, and ultimately, on the national security of the United States. Thank you.

EXHIBIT I

U.S. MACHINE TOOL IMPORT SHARE*

IMPORTS AS A PERCENT OF U.S. CONSUMPTION



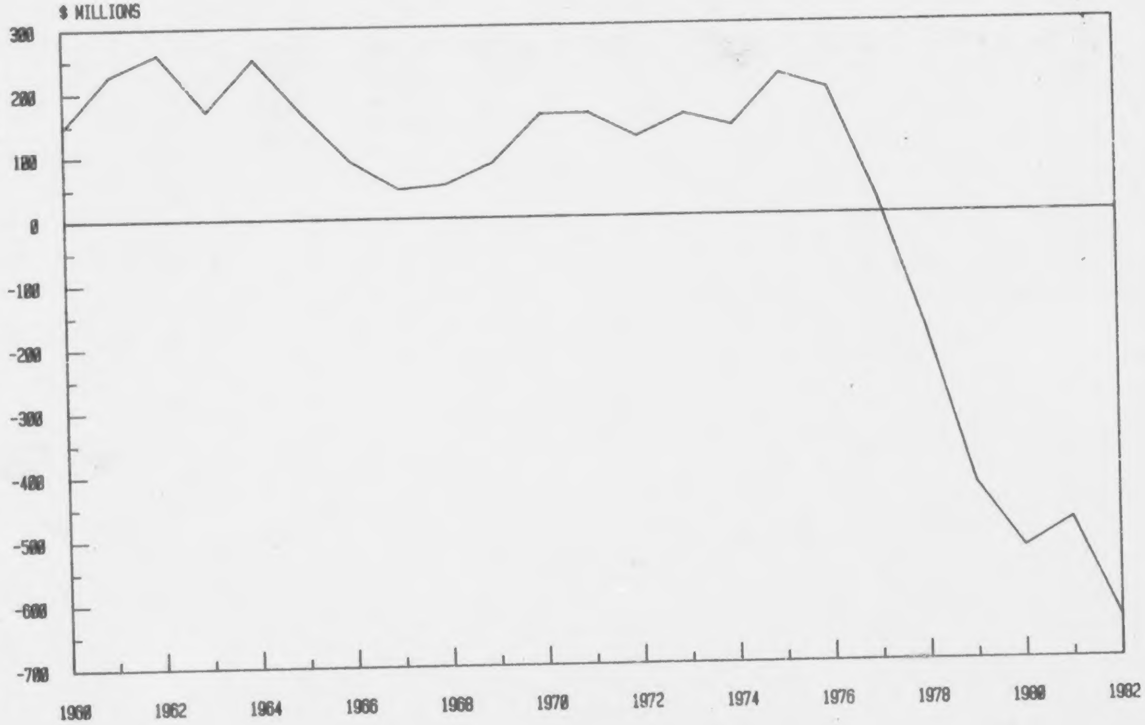
SOURCE: DoC, NMTBA

*Imports adjusted by 30% to reflect shipping, freight, insurance, dealer commissions and other charges associated with imports.

EXHIBIT II

U.S. MACHINE TOOL BALANCE OF TRADE

1960 TO 1982

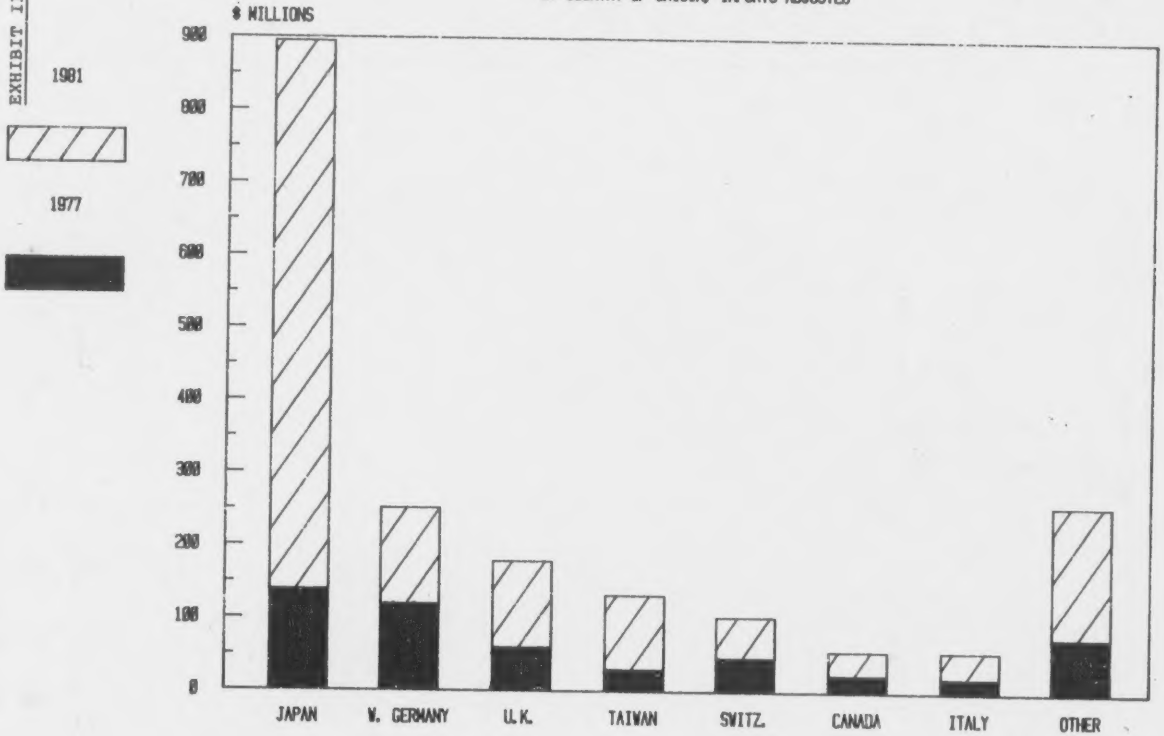


SOURCE: DoC, NMTBA

EXHIBIT III

U.S. MACHINE TOOL IMPORTS

BY COUNTRY OF ORIGIN, IMPORTS ADJUSTED



SOURCE: DoC, NMTBA

EXHIBIT IV

Japanese Export Statistics

1976 - Japan's top ten machine tool export markets comprised 78.2% of the value of total exports. These were:

	Country	(millions of dollars) Value of Exports	% of Export Total
1)	USA	$57.4	22.4%
2)	Rep. of Korea	48.9	19.1
3)	Poland	16.0	6.2
4)	Taiwan	14.8	5.8
5)	PRC	14.7	5.7
6)	Brazil	10.2	4.0
7)	Australia	9.2	3.6
8)	Russia	7.8	3.0
9)	U. K.	7.7	3.0
10)	Canada	7.1	2.8
11)	W. Germany	6.6	2.6
		$256.5	78.2%

1981 - Japan's top ten machine tool export markets comprised 79.7% of the value of total exports. The top ten were:

	Country	(millions of dollars) Value of Exports	% of Export Total
1)	USA	$691.1	49.0%
2)	W. Germany	87.2	6.2
3)	Australia	56.2	4.0
4)	U. K.	50.9	3.6
5)	Russia	49.6	3.5
6)	So. Africa	48.5	3.4
7)	Taiwan	46.8	3.3
8)	Belgium	34.9	2.5
9)	Korea	30.8	2.2
10)	Singapore	27.8	2.0
		$1,909.2	79.7%

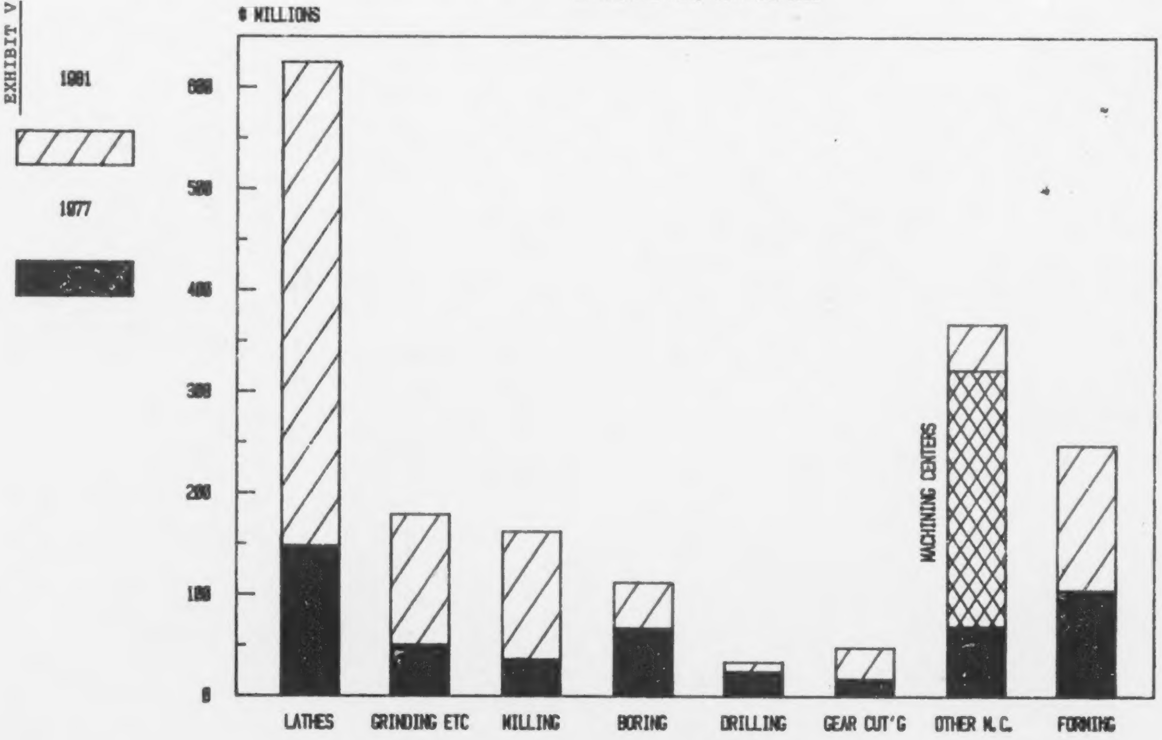
Source: Japanese Tariff Association

Spring, 1982

EXHIBIT V

U.S. MACHINE TOOL IMPORTS

BY MACHINE TYPE, 1977 AND 1981

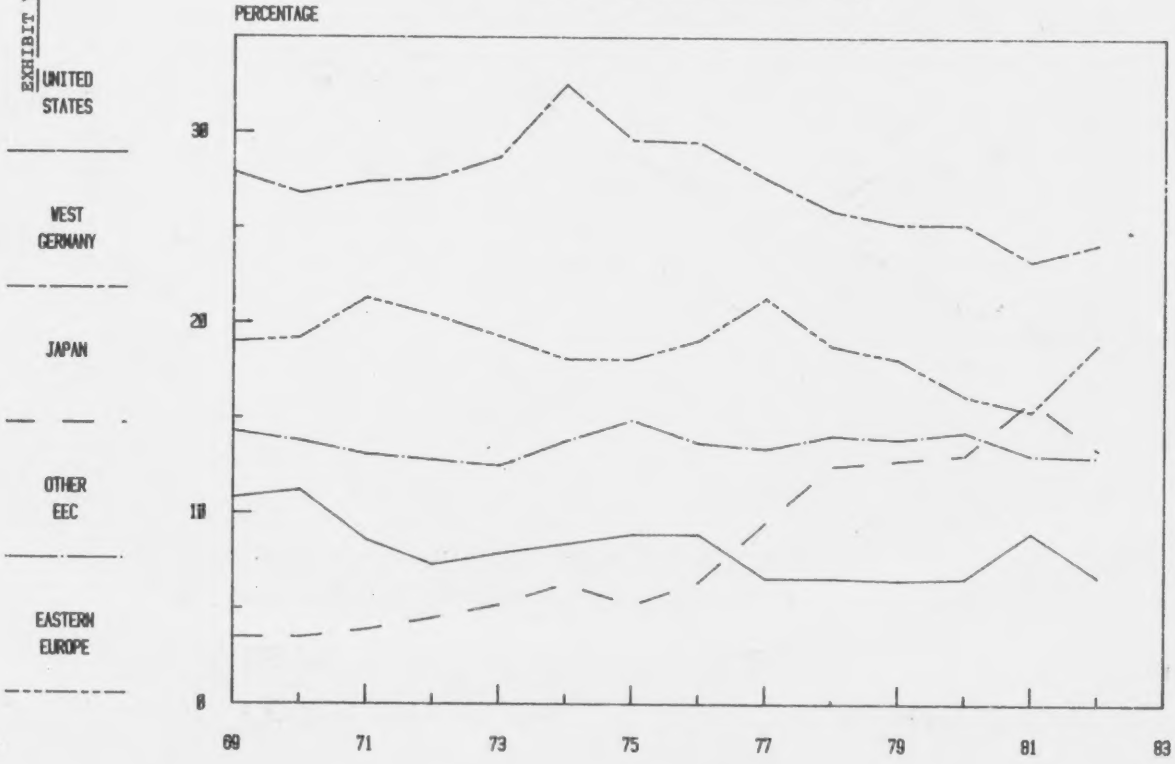


SOURCE: U.S. DOC, NMTBA

EXHIBIT VI

SHARE OF WORLD MACHINE TOOL EXPORTS

PERCENT OF WORLD EXPORTS, 1969 - 1982(p)

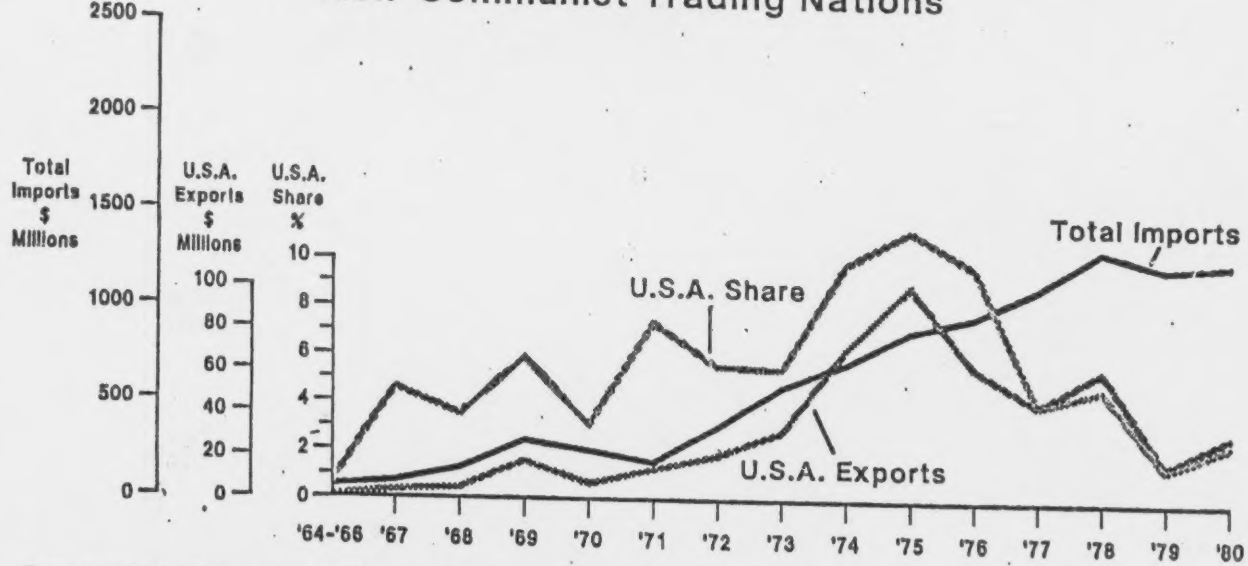


SOURCE: ECONOMIC HNDBK, CH 6

EXHIBIT VII

U.S. Share of Total Imports of Machine Tools by Eastern Bloc Countries,

Based Upon Trade With 14 Major Non-Communist Trading Nations

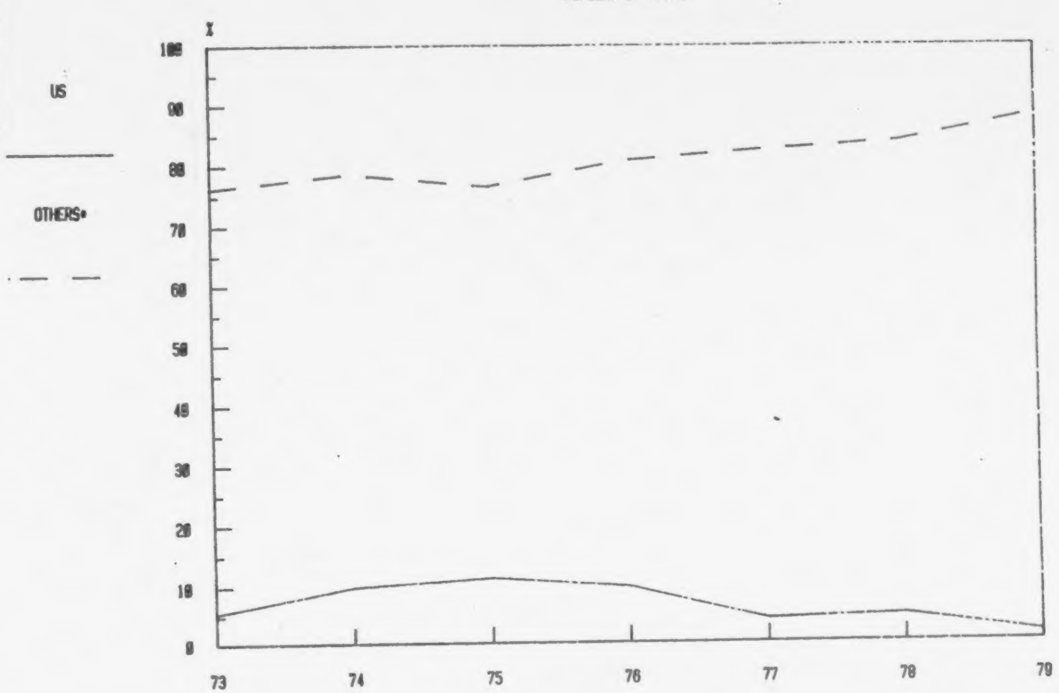


Prepared by National Machine Tool Builders' Association - 1982
Source: Bureau of the Census

EXHIBIT VIII

MACHINE TOOL IMPORTS OF EASTERN BLOC

PERCENT OF TOTAL



*WG, JAPAN, SWTZ, ITLY&FRANCE

EXHIBIT IX

EXPORTS OF NC MACHINE TOOLS TO THE USSR 1979-81

Exports from Japan to the USSR

	NC Lathes		Machining Centers	
	Units	Value	Units	Value
1979	8	$0.8 million	50	$ 8.6 million
1980	32	$2.8 million	76	$12.2 million
1981	3	$0.4 million	79	$16.8 million

Exports from W. Germany to the USSR

	NC Turret Lathes
1979	$31.9 million
1980	$48.4 million
1981	$25.1 million

NC Turret Lathes are the only category of NC published; units are not available

Exports from the U.S. to the USSR

	NC Lathes		Machining Centers	
	Units	Value	Units	Value
1979	3	$0.3 million	2	$0.6 million
1980	0	0	2	$0.6 million
1981	0	0	0	0

Source: Dept. of Commerce
Sept. 1982

JAMES A. GRAY

RESPONSE TO QUESTIONS FROM SENATOR GARN

1. Do you oppose giving the Customs Service the responsibility for the criminal enforcement of the Export Administration Act, and if so, is there any form in which you would support this, or is your opposition unequivocal? Why?

As we indicated in our written testimony, NMTBA believes that, assuming that technically qualified personnel are involved in the licensing process, the criteria for making licensing decisions is infinitely more important than the particular government agency which makes them. Therefore, NMTBA has no inherent objection to either the transfer of the enforcement function to the U.S. Customs Service nor, for that matter, to Senator Garn's proposal for an Office of Strategic Trade. It also goes without saying that we have no objection to keeping authority to administer and enforce the export licensing laws in the Department of Commerce.

2. Would you support the conversion of the Federal Trade Commission into an office within the Department of Commerce, headed by a Deputy Assistant Secretary?

The Federal Trade Commission was created by Congress as a quasi judicial body, responsible both to the Administration and to Congress. The export control agency, however, has in the past been regarded as principally an administrative and enforcement body responsible to the executive branch. Therefore, I would think that Congress would object strongly to a proposal to place the Federal Trade Commission solely within the purview of the executive branch by making it a part of the Department of Commerce.

3. If responsibility for export administration were to remain the responsibility of the Commerce Department, would you favor making the head of that operation an Under Secretary of Commerce, with no responsibilities other than administering our export control laws?

As we stated earlier, NMTBA believes that the criteria for deciding whether controls are to be enforced is more important than the agency which administers them or the level of personnel within that agency.

Senator **Heinz**. Mr. Gray, thank you very much.

Mr. Frischkorn.

STATEMENT OF ALLEN R. FRISCHKORN, ASSISTANT VICE PRESIDENT, GTE CORP., REPRESENTING THE ELECTRONIC INDUSTRIES ASSOCIATION

Mr. **Frischkorn**. Mr. Chairman, I am Allen Frischkorn, assistant vice president for Government Relations for the GTE Corp. and chairman of the Export Control Committee of the International Business Council of the Electronic Industries Association.

I am pleased to appear here today to discuss EIA's views on reauthorization and renewal of the Export Administration Act of 1979.

EIA is a Washington-based trade association which represents 400 American companies of all sizes, ranging from small, single product businesses to large multi-national corporations.

Let me begin today by saying that EIA recognizes the legitimate needs of the United States to control exports for national security purposes. However, U.S. export control laws too often present unwarranted disincentives to U.S. export sales.

I am sure you are well aware, Mr. Chairman, of the growing importance of international trade to the United States. With our trade deficit expected to hit $60 to $80 billion this year, and U.S. companies facing increased international competition, it is more important than ever to invigorate our export industries and to maximize our commercial opportunities. Without the increase in exports necessary to earn the profits essential for continued research, development, and innovation, U.S. companies could well lose their technological edge.

This would, indeed, be a tragedy, since a strong national economy is one of the most important factors in our national security.

ROOM FOR DECONTROL

While increased exports are necessary for economic health, I am not here today to advocate liberalization of U.S. export control laws over product sales and technology transfers to the Soviet Union and other East bloc countries. While there may be some room for decontrol of low-technology products to these countries, the desire to trade with the East bloc is not the motivating factor in the business community's criticisms of the U.S. export control laws.

What concerns EIA and others in the business community are continued controls on product sales to our allies, particularly our Cocom allies, and the apparent desire of the administration to increase controls on technology being transferred to free world countries.

EIA believes that export licensing requirements imposed for national security reasons can be substantially reduced without affecting the integrity of the export control program.

This conclusion is echoed by the recent report of the General Accounting Office, cited earlier by you, Mr. Chairman, which report concluded that almost half of all export license applications received each year could be eliminated without having a substantial effect on national security.

GAO noted that the present system, as you have already mentioned, is a mere paper exercise, not a control mechanism. In its report GAO also concluded that license requirements for exports to U.S. allies could be reduced.

EIA strongly urges Congress to amend the Export Administration Act to eliminate the validated license requirement for shipments of high-technology products to Cocom countries and other countries which agree to control products exported to Communist countries in a manner similar to the way we control products here in the United States.

In this regard, EIA notes that S. 397, recently introduced by you, Mr. Chairman, encourages the Department of Commerce to use special license procedures for trade with our allies. We are also pleased that the proposed legislation urges the President to negotiate to raise Cocom to treaty status, and to negotiate bilateral agreements with other countries to improve enforcement of the export control program.

Indeed, we feel that this whole aspect of multilateral enforcement of export controls is one of the most important things on which the law should focus.

With respect to technology transfer and the militarily critical technology list, EIA views with concern the administration's apparent intent to increase controls over technology transfer without regard to the country of destination.

The Export Administration Act of 1979 of course mandates the development of a new militarily critical technologies list. DOD and the Commerce Department, as we have heard today, are working together to try and implement new controls on supposedly militarily critical technologies. The basis for the militarily critical technologies list is the perceived need to re-focus our control methods by strengthen, controls on technology and keystone equipment and, at the same time, to decontrol some products and noncritical technology.

EIA agrees that technology controls play a legitimate role in protecting our national security. However, EIA has three main concerns with the MCTL effort.

First, the array of technologies covered in the militarily critical technologies list appears to be far broader than that which is necessary to deny truly military critical technologies to our adversaries.

Second, rather than decontrolling end products, as urged in the report of the Defense Science Board in 1976, the so-called Bucy report, the Government appears to be developing a whole new system of technology controls on top of the current system of product controls.

This combined approach, if you will, gives all the appearances of being even more burdensome than the current control system.

INCREASING TECHNOLOGY CONTROLS ON OUR ALLIES

Finally, the thrust of increased controls on technology will fall mainly on our allies and other free world countries, since a validated license would be required for technology transfers to free world countries for the first time.

Under current law, and this is something I was surprised to see when I looked at the impact of the MCTL effort closely, technology transfers to the Soviet Union and other Communist countries already require a validated license. So the militarily critical technologies list would not impose any additional licensing restrictions on transfers of technology to the Soviet Union or East bloc countries. What it will do is to require validated licenses, the need to go to the Commerce Department in advance and apply to make technology transfers, for technology transfers to Belgium, France, Germany, and our trading partners in Europe and elsewhere in the free world.

Instead of increasing technology controls on our allies, the Government should try to obtain the agreement of our Cocom partners to enforce controls over technologies which are in fact militarily critical.

A similar effort should be made with other free world trading partners. Only after such efforts fail should additional controls be placed on technology transfers to our allies and other free world countries.

Finally, if no other change is made in U.S. export control laws as a result of the present review, we would hope that the new Export Administration Act would provide for an increase in the resources of the Department of Commerce to process applications in an expeditious manner and to make the necessary assessments of foreign availability and economic impact.

It is indeed ironic that one of the major export disincentive programs administered by the U.S. Government has not received the adequate resources necessary to perform its responsibilities in a less burdensome manner.

This problem could be corrected by more specific direction in the new Export Administration Act and by sensitivity to the problems in the congressional appropriations process.

Thank you for your attention, Mr. Chairman, and the opportunity to appear here. I would be happy to answer any questions you may have.

[The complete statement follows.]

March 1983 Statement
on the
EXPORT ADMINISTRATION ACT
by the
Electronic Industries Association (EIA)

Mr. Chairman and Members of the Subcommittee, I am Allen R. Prischkorn, Jr., Assistant Vice President for Government Relations of GTE Corporation, and Chairman of the Export Control Committee of the International Business Council of the Electronic Industries Association ("EIA").

The Electronic Industries Association is a Washington based trade association which represents 400 American companies of all sizes ranging from small single-product businesses to large multinational corporations. EIA member companies are involved in the design, manufacture and sale of electronic components, equipment and systems. These products are marketed for governmental, industrial and consumer use.

A large number of EIA member companies are involved in the export of electronic products. In 1981, U.S. factory sales of electronic products were $114 billion of which $23 billion were exports. In that same year approximately 1.6 million Americans were employed in electronic manufacture. We estimate that at least 600,000 of these jobs are tied directly to exports.

Because of the importance of export sales to the electronics industry, EIA is very concerned with the administration of U.S.

export control laws. While EIA recognizes the legitimate needs of the U.S. to control exports for national security purposes, we are concerned that the present system of national security export controls too often presents an unwarranted disincentive to U.S. export sales. EIA believes that a number of changes can be made in the national security controls which will minimize the law's impact as a trade disincentive and still protect U.S. national security interests. EIA's specific proposals concerning national security controls are set forth under appropriate subheadings below.

EIA also questions the need for and effectiveness of foreign policy export controls as they are presently employed. EIA urges that additional limitations be placed on the exercise of such authority. EIA In addition, suggests a minor change in the U.S. antiboycott law. Finally, EIA is proposing a number of administrative reforms which it believes would make the U.S. export control laws less burdensome and thereby enhance the international competitiveness of U.S. companies. EIA urges that its suggestions for changes in the current law be adopted by Congress in its review of the Export Administration Act of 1979.

National Security Controls

Introduction

EIA supports the need for national security controls to prevent our potential foreign adversaries from gaining access to U.S. products and technology which could give them a significant military advantage. However, we believe that the present system of national security controls is overly broad and burdensome and should be modified substantially. We also believe that improvements can be made without having an adverse impact on our national security.

Controls Are Overly Broad. Many electronic products for commercial end-use are controlled for reasons of national security. Except for small dollar value shipments, strategic or "dual-use" items require a validated license when destined to any country in the world except Canada. We believe that the licensing requirements imposed for reasons of national security can be reduced substantially without affecting the integrity of the export control program.

This conclusion was echoed by a report published May 26, 1982, by the General Accounting Office (GAO) entitled, Export Control Regulations Could Be Reduced Without Affecting National Security.*/ The GAO report concluded that the present system is more a paper exercise than a control mechanism. GAO pointed out that in the fiscal year 1981, the U.S. licensing system processed

---

*/ Report of the Comptroller General of the United States (GAO/ID-82-14), May 26, 1982.

64,518 applications for items controlled on the basis of national security. The applications were divided as follows:

57,212	Destined for non-communist countries
7,306	Destined for communist countries
64,518	Total

The report pointed out that the Department of Defense reviewed only 37% of the applications destined to communist countries and only 1.7% of the applications destined for free world countries. GAO noted that DoD reviews so few applications because the majority of dual-use items are low technology products that Commerce routinely approves with little or no review, while DoD is primarily concerned with high technology products and technology transfers. On the basis of this evidence, GAO concluded that almost half the export license applications received each year could be eliminated without affecting national security.

In its report GAO also concluded that license requirements for exports to United States' allies could be significantly reduced. In this regard, GAO noted that the Government had denied none of the 22,377 license applications processed for COCOM countries in 1979. As a result, we can only conclude that U.S. companies suffer competitively without an offsetting national security benefit.

EIA urges the Department of Commerce to consider establishing a special general license category authorizing exports to COCOM countries. In the past, similar proposals have been considered by the Government but never implemented. We understand that the failure of the Government to adopt such proposals is due, at least in part, to the fear of potential diversions of exports to the Soviet Union and other East Bloc countries. Apparently, the Justice Department is concerned that eliminating the validated license requirement would impair its ability to bring criminal actions against persons violating export control regulations.

We believe that implementing a new general license category for COCOM countries would not present an undue problem of diversion nor would it impair the ability of the Department of Justice to enforce the laws. Any system of multilateral controls must rely upon the cooperation of allied countries to be effective. Increasing the role of COCOM in policing national security controls would place emphasis on the multilateral aspects of controls. It would also enable the Commerce Department to shift manpower from administrative details to other more productive areas. With respect to the Justice Department's concern, it should be noted that the Government would still have a record of equipment shipped to COCOM countries because Shipper's Export Declarations are required for all shipments of $500 or more. In addition, if the Government feels it needs more information about general license shipments to COCOM countries it could impose special reporting requirements on exporters.

If the Act is amended to provide for a general license for COCOM countries it should further provide for the elimination of re-export controls for shipments among COCOM countries. Under the present law not only are shipments to COCOM countries required to be licensed but re-exports between COCOM countries must be licensed. In line with the proposal for eliminating the validated license requirements for COCOM countries, re-exports from one COCOM country to another should not require a license. Further, if the COCOM structure is strengthened as we suggest later in these comments, DoC should consider eliminating the re-export license altogether for shipments between COCOM countries and non-COCOM free world countries. Also, for the reasons set forth above, validated export license and re-export license requirements should be eliminated on a country-by-country basis with respect to those countries which agree bilaterally with the United States to implement an export control system similar in effect to the one administered by the DoC.

Finally, for the reasons noted in the GAO report, the Commerce Department should redouble its efforts to eliminate controls altogether on low-technology products and on products which no longer represent "state-of-the-art".

Technology Transfer. The Export Administration Act of 1979 mandates the development of new controls on militarily critical technologies and DoD is now refining its Militarily Critical Technologies List (MCTL). The basis for the MCTL is a perceived need to re-focus our control efforts on strengthening controls on technology and keystone equipment while de-controlling some products and non-critical technologies. EIA agrees that technology controls play a legitimate role in protecting national security. However, experience with the MCTL effort indicates that, rather than de-controlling end products and concentrating controls on technology as envisioned in the Bucy Report of February 4, 1976,*/ the Government appears to be developing a whole new system of technology controls on top of the current system of product controls. Moreover, the array of technologies currently on the MCTL appears to be far broader than that which is necessary to deny critical technologies to our potential adversaries.

This "combined approach" gives all the appearances of being even more burdensome and providing an even greater disincentive to U.S. exports. Moreover, to be effective, any controls on technology must be supported by our allies. Before unilaterally increasing controls on technologies, the U.S. Government should obtain the agreement of our COCOM allies to establish and enforce controls over agreed technologies which are militarily critical. The impact of increased controls on technologies appears to fall mainly on our allies since validated licenses would presumably be required for technology transfers to Free World countries, which transfers presently do not require a validated license. Under current law, technology transfers to the Soviet Union and other East-Bloc countries already require validated licenses.

---

*/ An Analysis of Export Control of U.S.Technology-A DoD Perspective; Report of the Defense Science Board Task Force on Export of U.S. Technology; February 4, 1976.

With respect to increased controls on technology transfers, EIA concurs with the conclusions reached by the Rand Corporation in its April 1981 study entitled, Selling the Russians the Rope? Soviet Technology Policy and U.S. Export Controls. */ In the study, which was prepared for the Defense Advanced Research Projects Agency (DARPA), Rand took a critical look at the assumptions and objectives of U.S. high-technology export control policy. A central conclusion of the Rand study was that the Soviets are failing to exploit the potential advantages of using western high-technology imports to meet domestic requirements in a productive manner. The study suggests that in areas targeted by the Soviets as high priority sectors (e.g., military) there

---

*/ Selling the Russians the Rope? Soviet Technology Policy and U.S. Export Controls; Thane Gustafson; April 1981 #R 2649-ARPA; Rand.

is a clear need for export controls. The study goes on to note that in many areas, however, the Soviet ability to absorb technology is quite poor. Thus, on the basis of the Rand study's findings it would appear that the most useful application of controls would be on a limited number of technologies with fairly specific military applications. The blunderbuss approach currently embodied in the MCTL exercise seems to us to be too broad. The fact that the MCTL is overly broad, at least as initially proposed, is also supported by the findings of the Rand study (at page 4) cited above. Every effort should be made to limit the MCTL to only those technologies with clearly significant military implications. At the same time efforts should be stepped up to decontrol those products which embody low technology and which have only a remote or tangential military significance.

Foreign Availability. Section 4(c) of the Export Administration Act provides that export controls should not be imposed for national security or foreign policy reasons on items which are available without restriction from sources outside the United States in significant quantities and which are of comparable quality to U.S. products, unless the President determines that the absence of U.S. export controls could prove detrimental to the national security and foreign policy of the United States. This provision was strongly supported by industry the last time the Export Administration Act was up for renewal. However, it has been our experience that DoC has failed to fully implement the foreign availability provision. Specifically, DoC has failed to develop the internal resources necessary for making foreign availability determinations. We urge that the DoC be given more specific direction and resources so that it is able to gauge foreign availability. Obviously, it makes little sense to deny business to U.S. companies if our foreign competitors can and will supply similar products or technology to a foreign buyer.

Strengthening COCOM. As noted above, to be effective any system of export controls must be multilateral. It has been our experience that the COCOM system, which operates as a gentlemen's agreement, continues to operate to the detriment of U.S. suppliers. Since each of the COCOM members is relatively free to interpret the rules, in many instances foreign companies are permitted by their governments to make sales which the U.S. Government would not permit U.S. companies to make. To avoid this problem COCOM should be strengthened and, if possible, brought under a treaty framework to limit the ability of individual COCOM countries to make their own interpretations of the rules. An enforced uniform export control system is required.

Economic Impact. Section 3(2) of the Act requires that export controls be imposed only after a consideration of the impact of such controls is made on the U.S. economy. EIA believes that the process by which economic impact is considered should be strengthened. The availability of products or technology to a foreign adversary is only one aspect of national security. Another aspect of national security is a strong national economy and industrial base. The ability of U.S. companies to compete in international markets is crucial to the health of the domestic economy. Increased international sales could provide the financial resources to U.S. companies for the research and development which is essential if America is to keep its technological lead. In some cases, economic considerations may dictate abstaining from controls, particulary with respect to Free World countries. Indeed, given the existing international economic situation, we would anticipate that economic impact analysis should play an increasingly important role in determining whether export controls should be exercised.

Foreign Policy Export Controls

Introduction

Export controls applied for foreign policy reasons under the Export Administration Act of 1979 have not yielded a cost/benefit ratio favorable to U.S. interests. On the one hand these controls have imposed some additional costs upon target countries and communicated U.S. disapproval. In many instances, however, the controls have not achieved the foreign policy purposes for which they were intended, nor have they denied the target countries imports which could meet the same needs as the embargoed U.S. products. As adverse side effects, the controls have also imposed high and discriminatory costs on certain U.S. producers, damaged the ability of U.S. companies to compete in international markets, and harmed relations with U.S. allies.

EIA Questions the Need for Foreign Policy Control Authority. The President has a number of foreign policy instruments other than restricting exports which he can use to communicate U.S. disapproval of a foreign government's behavior. Examples include diplomatic representations, travel restrictions, cancellation of exchange programs, limitations on foreign assistance and commercial credits, and import restrictions. If a truly serious foreign policy emergency arises in which special controls over U.S. exports are needed, the President can (1) ask Congress for legislative authority to impose special controls which would enable the issue to be carefully examined, or (2) apply controls pursuant to the International Emergency Economic Powers Act (IEEPA). The President already has authority other than the EAA or IEEPA to carry out U.S. obligations pursuant to international agreements such as, for example, Section 5 of the U.N. Participation Act of 1945.

Limitations Should be Placed on the Exercise of Foreign Policy Controls. In the event the President's authority is continued, limitations should be placed on the President's discretion to invoke controls. Specifically, the existing criteria for imposing foreign policy controls should not be hortatory but mandatory. They should require the President to make a more compelling showing of need, effectiveness, foreign unavailability and to indicate why other foreign policy measures have not been effective. In addition, the criteria should include limitations on the unilateral imposition of foreign policy controls.

Further, export controls for foreign policy purposes should not apply to foreign nationals, including foreign subsidiaries and licensees of United States corporations. The damage to U.S. relations with its allies which resulted from the recent Siberian gas pipeline controls demonstrates that such extraterritorial application of controls can be counter-productive as well as ineffective.

Moreover, export controls for foreign policy purposes should not have retroactive application except in extraordinary circumstances. With respect to exports requiring validated licenses, once the license is issued it should not normally be subject to repeal or any further restriction. With respect to exports that fall within general licenses, new restrictions or license requirements should not affect existing contracts. Violation of the "sanctity of contracts" principle in the foreign policy export context is probably the most significant factor contributing to the view of foreign buyers that U.S. companies are not reliable suppliers.

Also, it is our view that import controls should be imposed concurrently with the imposition of any foreign policy export controls. This will assure that a foreign country does not benefit from sales into the U.S. while foreign policy export controls are in effect. Special provisions could be made that would exempt critical commodities from any import ban.

Finally, the EAA should require that the following procedures be followed with respect to the imposition of export controls for foreign policy purposes:

a. Prior to imposing export controls, the President must publish his intention to do so in the _Federal Register_. The _Federal Register_ notice must include an announcement of a public comment period.

b. The Executive Branch must consult with Congress, hold public hearings, consider written comments and submit to the Congress a comprehensive report setting forth specific findings with respect to each of the criteria contained in the Act, before imposing export controls. If the President fails to follow any one of these procedures, the controls cannot be imposed.

c. If the President determines that the national interest requires immediate imposition of foreign policy export controls, he may postpone the consultations, hearings and comment period until after such imposition. The Executive Branch must, however, hold consultations and hearings, and commence the comment period within thirty (30) days of imposing the controls.

If these emergency procedures are invoked, the President must nevertheless submit to Congress a preliminary report prior to the imposition of controls. The preliminary report must reflect consideration of each of the criteria specified in the Act based upon the best information available to the President. It must also explain why consultations and hearings could not be held prior to the imposition of the controls. Any controls imposed prior to the submission of a preliminary report would be void and unenforceable. Within forty-five (45) days from imposition of the controls, the President must submit to Congress a final report setting forth specific findings with respect to each of the criteria contained in the Act. If the President fails to submit such a final report within forty-five days, the controls automatically expire.

d. All export controls imposed for foreign policy purposes expire after 180 days. If the President wishes to extend the controls beyond that time, he must again initiate the procedures outlined above.

Antiboycott Provisions

Unintentional Violations. The Export Administration Act should be amended in order to mitigate penalties in light of facts and circumstances, such as violations which are committed unintentionally by low-level employees without authorization by higher management and violations which are voluntarily disclosed by exporters. Currently, antiboycott provisions exist under two separate laws and, accordingly, are administered by two separate departments: Treasury and Commerce. Whereas, Treasury's regulations contain a provision (Guideline D.4) recognizing that unintentional violations which are against company policy can occur, Commerce's regulations do not.

Proposals for Administrative Reform

Introduction

EIA supports keeping the export control function within the Department of Commerce. We oppose proposals which would transfer the export control function to an independent agency or to the Department of Defense. The present system which divides responsibility between the Department of Commerce and the Department of Defense has worked reasonably well. Moreover, because of its trade promotion activities, DoC is uniquely qualified to objectively balance national security, economic and trade considerations.

EIA believes that there are a number of administrative changes which can be made to improve the export control process and to reduce the burden of the export control program on U.S. businesses. There are many administrative improvements which the Department of Commerce can make without changes in the law such as clarifying its regulations, reducing documentation requirements on some shipments and simplifying its forms. We would hope that DoC's efforts in this regard are continued and expanded. In addition, the creation of a general license for COCOM countries as suggested above should reduce the workload of the Office of Export Administration and thereby free resources for other activities. Set forth below are other administrative changes which EIA believes should be incorporated into the new Export Administration Act.

Increase the Resources of the Export Administration to Facilitate the Goal of Export Promotion. The new Export Administration Act should stress the importance of the national objective to increase exports. Indeed it should make clear that the goal of export promotion should be second only to the goal of the law to guard the national security interests of the United States. Sufficient manpower and resources should be made available to the Office of Export Administration to the maximum extent feasible, to expedite the consideration of license applications and to handle problem inquiries from exporters. In addition, sufficient resources should be made available to the Office of Export Administration to improve the training available to DoC licensing personnel and to make continued improvements in such areas as computerization. It is indeed ironic that one of the major export disincentive programs administered by the U.S. Government does not receive adequate financial resources to perform its responsibilities in the least burdensome manner possible. This should be corrected by more specific direction in the Export Administration Act and by sensitivity to the problem in the congressional appropriations processes.

Voluntary Disclosure Policy. Industry is concerned about recent penalties assessed against companies making voluntary disclosures of export violations. In an effective control system, we believe industry and government must work closely together and communicate openly. EIA believes that to the maximum extent possible, DoC should promote voluntary compliance by responsible companies and encourage companies to make such disclosures. Specific authority to mitigate penalties when violations are voluntarily disclosed would encourage such behavior. Such a program could be modeled after the successful "Prior Disclosure" program of the U.S. Customs Service set forth in 19 CFR §162.74. If this concept is accepted, written guidelines should be published in the Federal Register.

Judicial Review. The procedures for judicial review set forth in Section 10(j) do not provide for meaningful administrative advocacy proceedings. EIA believes that exporters should have a right to appeal DoC administrative decisions, including decisions relating to CCL classifications, statutory procedural requirements, administrative penalties and foreign availability to an independent body such as the Court of International Trade. The standard for review of such cases would be whether the action of the Office of Export Administration is arbitrary, capricious or otherwise not in accordance with the law.

Enforcement Activities. EIA is concerned about the manner in which export control enforcement activities are being carried out. Activities such as the U.S. Customs Service "Operation Exodus" program have penalized legitimate exporters by detaining legal shipments for extended periods of time. It is apparent to industry that many local customs inspectors lack necessary technical expertise and that coordination between field inspectors and their Washington headquarters is not adequate. We are hopeful that the new DoC Office of Export Enforcement will work closely with Customs to reduce the time involved between the detention and the actual seizure or release of shipments.

Furthermore, we urge that the new law direct DoC and Customs to develop a certification program which would exempt responsible companies which have internal control programs and demonstrated records of compliance from routine inspections at ports of exit.

Conclusion

EIA firmly believes that the changes which it has suggested herein will lessen the burden of U.S. export control laws without having any adverse impact on the national security of the United States. Indeed a healthy national economy is one of the most important factors of national security. Without the increase of exports necessary to earn the profits essential for continued research, development and innovation, U.S. companies could well lose their technological edge. In today's world economy it is more important than ever to maximize our commercial opportunities. The goals of export promotion and national security need not be mutually exclusive. EIA believes that the adoption of its proposals will assure that both goals can be achieved.

Senator HEINZ. Mr. Frischkorn, thank you very much.
Mr. DeRose.

STATEMENT OF J. A. DeROSE, PROGRAM DIRECTOR OF PUBLIC AFFAIRS, IBM, AND CHAIRMAN OF THE SUBCOMMITTEE ON EXPORT CONTROLS OF THE SEMICONDUCTOR INDUSTRY ASSOCIATION

Mr. DEROSE. Thank you. I am Joe DeRose, appearing for IBM. We are members of the Semiconductor Industry Association, which is composed of 57 different companies.

The thing I would like to concentrate on in my brief comments is the proposal for a Comprehensive Operations License which we advocate and endorse.

Our Nation today is virtually the only Western democracy that has established a major statutory scheme to restrict exports of technology, particularly to the West.

We would like to mention that any approach to control militarily critical technologies must be strictly confined to items directly and significantly related to the military potential of a foreign country whose interests are adverse to U.S. national security, and an overly broad definition of what is militarily critical leads to an unworkably broad definition of controls.

PROBLEMS POSED BY FOREIGN AVAILABILITY

We believe it would both be futile and self-defeating for the United States to develop a system of controls on technologies that remain available on an uncontrolled basis from our principal allies and competitors.

The United States, with very few exceptions, has no monopoly on militarily critical goods and technology. U.S. exports of technology should not be restrained when uncontrolled sources of comparable technology in other Western nations will legally fill the demand.

To overcome the problems posed by foreign availability, a common export control system could be established with our Cocom allies, including Australia and New Zealand. We believe that any changes in existing export controls should reflect rather than precede an agreement in Cocom.

In short, we believe that export controls for national security purposes must be multilateral in order to be effective in denying militarily critical technologies to an adversary. Any new controls on technology transfer should be accompanied by a corresponding reduction in controls on end-products.

Export licensing must be sufficiently restricted to control the export of militarily critical technologies while sufficiently flexible to allow U.S. companies to trade and compete internationally. We believe this objective could be best furthered through licensing mechanisms that take advantage of existing commercial safeguards and the shared interest of U.S. companies to protect sensitive or proprietary information.

The Semiconductor Industry Association can accept the tightening of controls on the exports of militarily critical technologies to the West if a licensing mechanism is established that is tailored to the special characteristics of technology intensive firms. Companies treat technology differently from product to product, and so should the Government.

It is, moreover, essential to the establishment of an optimal framework for the control of militarily critical technology that this licensing mechanism be specifically set forth in the extended Export Administration Act.

CREATE A NEW COMPREHENSIVE OPERATIONS LICENSE

We urge the subcommittee to create a new Comprehensive Operations License for the transfer of militarily critical technology and required keystone or sensitive equipment to well-established, long-term recipients of this technology and equipment.

The license should rely on the Government's review in advance and approval of the extensive controls already established by these applicant companies, the companies involved in the production of items on the militarily critical technologies list, items such as the specifications for very high-density semiconductors.

The protection of this technology is indispensable to maintaining their competitive position. No firm can stay in the business for long without a sophisticated system of internal controls on its own extensive technical know-how.

SIA's proposal would allow the Government to build upon this existing network of self-imposed, self-patrolled controls on the export of sensitive technology.

The comprehensive operations license would be available only to those applicants engaged in the export of militarily critical technology.

It would apply to the export of the critical technical data, keystone equipment and certain keystone materials, as well as other commodities for which the exporter would require a validated license.

It would authorize unlimited exports and reexports to the eligible consignees mentioned in our network of companies in the Western countries, that is, Cocom, Australia, New Zealand, and other friendly or neutral nations.

Those consignees would include branches, subsidiaries, parents, licensees, joint-venture partners, suppliers, vendors, subcontractors, of the U.S. applicant. Certain specified items such as nuclear communications intercept devices would not be eligible for this license.

The license would be issued for 2 years and renewable at 2-year intervals. Issuance of the license would be dependent on documented and reliable internal control systems of the companies applying for this license.

It would also oblige a showing of contractual obligations between the applicants and their consignees that would prohibit the disclosure or transfer of this technology.

As a safeguard, the license would include provisions for periodic Government reviews of the applicant's internal control system.

In sum, the issuance of a license would depend on the demonstrated ability of the exporter to control militarily critical technologies, and as such, it would be available to an honor roll of American companies.

In effect, the internal control system which I described would itself be licensed. Discretion to ship know-how, equipment, and materials to the West would be tied to a company's established ability to control the dissemination of these items.

Once a company demonstrates ability to control sensitive technology, the administrative burdens and delays would be minimal. In this respect, the system would serve as an inducement to companies to attain an adequate level of internal controls.

The administration of the Comprehensive Operations License would be rather straightforward. Exporters would submit an application with a broad description of the items involved, a description of the company's internal control system, copies of the operating agreement with its network of foreign consignees, and supporting statements from the consignees.

In place of a value limitation on the necessity of a purchase order, we envisage that the applicant would report on a semiannual basis all transactions made pursuant to the license The Comprehensive Operations License, as I've outlined here, would not replace other existing forms of export licenses. It would apply only to transactions that normally require a validated license. Exporters, both large and small, could qualify to use this license.

Although the details of the Comprehensive Operations License would have to be elaborated at the regulatory levels, it is crucial that the new Export Administration Act provide a clear statutory foundation.

Mr. Chairman, you have recognized this need in your bill, S. 397, introduced on February 2. It amends the Export Administration Act to provide for a Comprehensive Operations License, and is a step in the right direction.

We urge the subcommittee to expand upon that provision. In order to insure that the comprehensive operations license, unlike the general qualified license, is an effective licensing mechanism, clear statutory language is necessary to describe the purpose of the license and its primary elements.

I appreciate the opportunity to present these views to you and SIA is ready to respond to any questions you may have.

[The complete statement follows.]

Statement of J. A. DeRose
Program Director of Public Affairs
International Business Machines Corporation

On Behalf
of the
Semiconductor Industry Association

NATIONAL SECURITY EXPORT CONTROL: A PROPOSAL FOR A COMPREHENSIVE OPERATIONS LICENSE

Introduction

Mr. Chairman, I am Joe DeRose, Program Director of Public Affairs of the International Business Machines Corporation (IBM). I am Chairman of the Subcommittee on Export Controls of the Semiconductor Industry Association (SIA) and am here today representing SIA.

SIA is a trade association of fifty-seven semiconductor producers, including those who produce for sale and those who produce for their own use. SIA represents these producers in matters of trade and government policy.

It is most fitting for the semiconductor industry to address national security controls. SIA's member-firms develop and manufacture the microelectronic circuits that have been the foundation of U.S. world-wide leadership in high technology. The strength and competitive vitality of our industry is dependent upon world-wide trade. At the same time, our industry produces technology and products which have important military applications. Although military sales represent only about 7% of total U.S. industry sales, advanced microelectronics can be attractive targets for diversion by potential adversaries of the United States.

Mr. Chairman, I would like to join the others on this panel in commending your Subcommittee for its energetic review of export controls.

Our nation is virtually the only Western democracy that has established a major statutory scheme to restrict exports. In contrast, the focus of other friendly and allied nations is on the promotion of exports. Our ability to strike a balance between the appropriate control and the promotion of exports is crucial to our national security and economic well-being. SIA believes that your bill, Mr. Chairman, represents a constructive approach to reach this balance of vital national interests.

The issues presented by the reauthorization of the Export Administration Act of 1979 (the "Act") are varied and far-ranging. Although our member firms have strong views on many of these issues, particularly in the area of foreign policy controls, I will address only national security controls as they pertain to the transfer abroad of militarily critical technology.

Principles for Effective National Security Controls for the Transfer of Technology

SIA appreciates the need for an effective mechanism to prevent goods and technology that are militarily critical from being diverted to potential adversaries. We have always accepted the necessity for an export licensing system that meets U.S. national security needs. At the same time, we are deeply concerned that excessive controls may be imposed -- especially on the necessary transfer of technology -- which would seriously hinder the ability of U.S. firms to compete internationally. Our lifeblood as companies is the rapid deployment abroad of the technology we develop for our own use. Export controls for national security purposes should prevent diversion to potential adversaries with the minimum interference with U.S. trade. Application of a few basic principles can achieve this result.

First, any approach to the control of militarily critical technology must be strictly confined to items directly and significantly related to the military potential of a foreign country whose interests are adverse to the U.S. national security. An overly broad definition of what is militarily critical leads to an unworkable proliferation of controls.

Second, we believe it would be both futile and self-defeating for the United States to develop an extensive system of controls on technologies that remain available on an uncontrolled basis from our principal allies and competitors. The United States, with very few exceptions, has no monopoly on militarily critical goods and technology. U.S. exports of technology should not be restrained when uncontrolled sources of comparable technology in other Western nations will eagerly fill the demand.

To overcome the problems posed by foreign availability, common export controls should be established with our COCOM allies and Australia and New Zealand. We believe that any changes in existing export controls should reflect, rather than precede, agreement reached in COCOM. A simultaneous effort should be made to obtain agreement from friendly neutral countries on a bilateral basis to ensure, to the extent possible, that these countries monitor and control exports and reexports in a manner consistent with the COCOM controls. In short, we believe that export controls for national security purposes must be multilateral in order to be effective in denying militarily critical technologies to an adversary.

Third, any new controls on technology transfer should be accompanied by a corresponding reduction in controls on end-products.

Finally, export licensing must be sufficiently restrictive to control the export of militarily critical technology while sufficiently flexible to allow U.S. companies to trade and compete internationally. We believe that this objective could best be furthered through a licensing mechanism that takes advantage of existing commercial safeguards and the shared interests of U.S. companies in protecting sensitive proprietary information.

A New Licensing Mechanism -- The Comprehensive Operations License

Recently, the Defense Department circulated a regulatory proposal that would subject the transfer of militarily critical technology to validated license requirements. The same effect could be achieved under various pending legislative proposals.

Recognizing that stricter controls on the transfer of militarily critical technology may be forthcoming, we must determine the best way to implement such controls.

SIA can accept a tightening of controls on the export of militarily critical technology to the West if a licensing mechanism is established that is tailored to the special characteristics of technology intensive firms. Companies treat technology differently from products, and so should the government. It is, moreover, essential to the establishment of an optimal framework for the control of militarily critical technology that this licensing mechanism be specifically set forth in the extended Export Administration Act.

SIA urges the Subcommittee to create a new Comprehensive Operations License for the transfer of militarily critical technology and required keystone equipment to well-established, long-term recipients -- a license relying on government review and approval of the extensive controls already established by these companies. For companies involved in the production of items on the militarily critical technology list -- items like the specifications for very high-density semiconductors -- protection of technology is indispensable to maintaining their competitive position. No firm can stay in the business for long without a sophisticated system of internal control on its technical know-how. SIA's proposal would allow the government to build upon this existing network of self-imposed, self-patrolled controls on the export of sensitive technology.

The Comprehensive Operations License would be available only to applicants engaged in the export of militarily critical technology. It would apply to the export of critical technical data, keystone equipment and keystone materials, as well as commodities and materials for which the exporter would otherwise require a validated license. It would authorize unlimited exports and reexports to eligible consignees in Western countries (COCOM, Australia, New Zealand, and other friendly or neutral nations). Those eligible consignees would include branches, subsidiaries, parents, licensees, joint venturers, suppliers, vendors or subcontractors of the applicant. Certain specified items, such as nuclear or communication intercept devices, would not be eligible for the license. The license would be issued for two years and renewable at two-year intervals.

Issuance of the license would be dependent on a documented and reliable internal control system over items subject to license, as well as on the existence of contractual obligations between the applicant and its consignees prohibiting disclosure or transfer of those items. As a safeguard, the license would include provision for periodic government reviews of the applicant's internal control system.

In sum, the issuance of the license would depend on the demonstrated ability of the exporter to control militarily critical technology. As such, it would be available to an "honor roll" of American companies. In effect, the internal control systems which I have described would themselves be licensed.

Discretion to ship-know-how, equipment and materials to the West would be tied to a company's established ability to control the dissemination of these items. Once a company demonstrated its ability to control sensitive technology, administrative burdens and delays would be minimal. In this respect, the system would serve as an inducement to companies to attain adequate internal controls.

Administration of the Comprehensive Operations License would be straightforward. Exporters would submit an application with a broad description of the items involved, a description of the company's internal control system, copies of the operating agreements with its network of foreign consignees, and supporting statements from the consignees. In place of a value limitation or the necessity of a purchase order, we envision that the applicant would report on a semiannual basis all transactions made pursuant to the license.

The Comprehensive Operations License, as I have outlined it, would not replace other existing forms of export licenses, as it would apply only to transactions that would normally require validated licenses. Exporters both large and small could qualify to use the license. Although the license would be available only to firms which deal with militarily critical technology, for those firms, the license would cover all items -- equipment and commodities -- that would otherwise be subject to individual validated license requirements.

In developing our proposal, we have attempted to strike a balance between the need to achieve sufficient control of critical technology and the degree of flexibility that is necessary to compete abroad. We have tailored our proposal to deal with the practical limitations of the current system, and to avoid the enormous volume of license applications that will inevitably result from any attempt to achieve greater control over technology transfers through the use of the current system of individual transaction controls.

Let me emphasize that, by itself, a requirement to report each individual transaction involving the transfer of technology could be devastating to our industry. For example, to require a validated license for each transfer of technology within a company's network of affiliated companies would create a substantial workload and disruption. A prerequisite to a viable operation for any company with an international network of this kind -- particularly in an industry on the leading edge of technology -- is the continuous exchange of technical information and equipment. We are concerned that extensive export controls on semiconductor technology could undermine commercial research and development, stifle our international operations, and needlessly restrict the ability of U.S. firms to compete. Licensing controls that envision an approval process for every transfer on a transaction-by-transaction basis will inevitably create drastic administrative burdens for the U.S. Government as well and equally drastic administrative delays for companies with significant international operations.

A comprehensive operations licensing system would minimize the problems of technology transfer for U.S. industry and would, at the same time, enable the U.S. Government to focus on the system of control rather than on an overwhelming number of individual transactions. This approach provides a strong incentive for U.S. firms to maintain their internal controls on proprietary data and allows the U.S. Government to concentrate its enforcement efforts more efficiently. It would avoid handicapping U.S. exporters relative to our foreign competitors without sacrificing the necessary protection of U.S. technology.

Finally, our allies, who possess generally the same technologies and will need parallel export controls, will be more likely to cooperate in the control of militarily critical technologies if the requirements are not unduly burdensome.

A Legislative Basis for the Comprehensive Operations License

Although the details of the Comprehensive Operations License would be elaborated at the regulatory level, it is crucial that the new Export Administration Act provide a clear statutory foundation. Mr. Chairman, you have recognized this need. S. 397, introduced by you on February 2, 1983, amends the Export Administration Act to provide for a Comprehensive Operations License. It is a step in the right direction. We urge the Subcommittee to expand upon that provision.

In order to ensure that the Comprehensive Operations License, unlike the general qualified license, is an effective licensing mechanism, clear statutory language is necessary to describe the purpose of the license and its primary elements. In addition, Congress should express its intent that the license be readily available and accompanied by a corresponding reduction in end-product controls. Finally, the provision concerning the Comprehensive Operation License should be part of the national security section of the Act, in order to underscore the importance of the new license as an instrument for controlling the export of militarily critical technology.

SIA stands ready to assist the Subcommittee in developing appropriate statutory language for a Comprehensive Operations License.

CONCLUSION

SIA does not believe that an extensive overhaul of the national security provisions of the Export Administration Act is required. Specific statutory adjustments, coupled with substantial improvement in the administration of the Act along the lines of the basic principles we have outlined, would go far in enhancing U.S. national security without arbitrarily discouraging U.S. trade.

In the area of licensing, however, SIA believes it is imperative that the national security section be amended to establish a Comprehensive Operations License. Such a license would provide a flexible and realistic mechanism which would answer the U.S. Government's need to impose additional controls over the transfer of technology abroad, and the high-technology industries' need to continue to compete internationally.

I appreciate the opportunity to present the views of SIA to this Subcommittee.

SIA SEMICONDUCTOR INDUSTRY ASSOCIATION
20380 Town Center Lane • Suite 155 • Cupertino, Ca 95014 • 408/255-3522
Telex: 172 231 SIA CPTO

March 21, 1983

Mr. Paul Freedenberg
United States Senate
Committee on Banking
SD-534 Dirksen Senate
Office Building
Washington, D.C. 20510

Dear Paul:

The attached answers are being provided to you in response to a request to me from Senator Heinz on behalf of Senator Garn. The questions were posed in the context of your subcommittee's hearings on the Export Administration Act on March 2, 1983.

Sincerely yours,

Joe DeRose
J.A. DeRose

JAD:cdh
Attachment

Paul Freedenberg in Response to Senator Heinz Request on Behalf of Senator Garn

ANSWERS

1. We believe that the Department of Commerce should maintain primary responsibility for the Export Administration Act, but should work closely with other agencies on the enforcement aspects of export administration. We would expect the DOC to co-ordinate enforcement with the Customs Service, the FBI and other intelligence agencies, in order to ensure effective inspection and control and at the same time avoid needless interference with lawful shipments. This would entail access for these other agencies to the licensing files of the Office of Export Administration of the DOC. In addition, we strongly recommend that the commodity control list numbers be modified to correspond to the more precise International Harmonized System codes -- a system with which customs is familiar.

2. We have no opinion on the proposed changes in the jurisdiction of the FTC.

3. We feel that the new management system within DOC is working adequately at the present time, and do not see the necessity of creating a new Under Secretary to handle export administration. However, we would not find it unreasonable to elevate the head of the Office of Export Administration to the level of an Assistant Secretary.

Senator HEINZ. Thank you very much, Mr. DeRose.

I have a number of questions for all of you, but let me ask you, Mr. DeRose, since you were talking about the comprehensive operations license as you describe it, it sounds more like we're going to license companies than we're going to license technologies.

Is that the essence of it?

Mr. DEROSE. It's a combination of both. What we would find is that some companies, if they are larger, might have several technologies. You may recall from the earlier testimony they described the fact that there are approximately 18 technologies in the militarily critical technologies grouping

Any one company might be involved in more than one of those technologies. As it turns out, our company happens to be involved in several of them.

We would expect to go forward with the transfer of each technology and describe what its network is to each of the countries, and we would segregate those activities one from the other in order to serve the requirements of the DOD and the Department of Commerce.

Senator HEINZ. But you're going to rely on companies for most of the self-policing.

Mr. DEROSE. Yes, we are, but what we would invite of course is a review by the administration of our procedures, such that they could tell us whether they could be improved, where they could call out to us any consignee who was at risk.

We would of course make every effort to change arrangement accordingly.

Senator HEINZ. Now in my legislation we aim at requiring reexport conditions being imposed as a condition of getting a qualified general license. That's the qualification. As I understand your proposal, you do not have this.

Mr. DEROSE. Our proposal was a closed network of consignees so that we would tell Government the technology is being transferred to these parties and these parties would only deal with each other.

The end product of that technology would be controlled under other licensing procedures. We will describe fully under the consignees in advance to avoid going through that we don't have to a whole series of individual license applications for each transaction.

There would be a clear overview available to the authorities.

Senator HEINZ. Let me ask this question just generally. Senator Garn made the comment in his opening statement that the Commerce Department can't both promote exports and regulate exports; do you agree, Mr. Frischkorn?

DIVIDED RESPONSIBILITY WORKS WELL

Mr. FRISCHKORN. No, I do not agree. I think the present system whereby responsibility is divided between the Department of Commerce and the Department of Defense works reasonably well.

Certainly there are problems, as has been noted today. I would not like to see the export control function transferred to an independent Office of Strategic Trade or to the Defense Department, as has been proposed.

Senator **Heinz**. What would be the matter with an Office of Strategic Trade? What's your problem?

Mr. **Frischkorn**. I think the problem that we have today is that the hard liners in terms of control have substantial weight. I think having the Commerce Department involved provides a counterbalance to that weight.

Senator **Heinz**. So you see that as just a covert means of giving the Defense Department more power?

Mr. **Frischkorn**. Exactly.

Senator **Heinz**. Mr. Henriques, how do you feel?

Mr. **Henriques**. We've looked at the proposals, both that Senator Garn has proposed and that Senator Nunn has proposed. We're studying them right now.

We don't see anything necessarily wrong with the Commerce Department having both functions. We think that could be accomplished.

Senator **Heinz**. Do you think the Office of Strategic Trade would be simply a backdoor means of giving the Defense Department more authority?

Mr. **Henriques**. I don't know if I could say that. Clearly, it certainly could evolve that way.

Senator **Heinz**. Mr. DeRose?

Mr. **DeRose**. We are rather comfortable with the Department of Commerce at this time.

Senator **Heinz**. Do you support or oppose the idea of an Office of Strategic Trade?

Mr. **DeRose**. The Association hasn't studied it yet.

Senator **Heinz**. Are you for or against giving the Department of Defense more authority here?

Mr. **DeRose**. We believe in the area of militarily critical technologies they have very extensive authority already.

Senator **Heinz**. From that I should infer that you think they don't need any additional authority?

Mr. **DeRose**. I would think that they have sufficient at this time, yes, sir.

Senator **Heinz**. Mr. Gleason?

Mr. **Gleason**. I've dealt with the Department of Commerce Office of Export Administration for a very long time through various people; in fact I saw here this morning Mr. Rauer Meyer, director of that office for many years in the past, and from Mr. Meyer on up to the incumbents, I've never had the feeling that the people in the OEA feel that they as individuals or in their official capacity have a responsibility for promoting trade.

Looking at it from our side of the fence, they have not been interested in trade, they have been interested in enforcing the Export Administration Act.

Therefore, I have no discomfort with it in its present location. I have more discomfort with the concept of its going to an agency where even at the most senior level of the agency, if it goes that far for review, there isn't a balanced view of the Export Administration Act and the business requirements.

Senator **Heinz**. Mr. Gray?

Mr. **Gray**. Better the devil you know than the devil you don't. [Laughter.]

I would say it's more important to concentrate on the criteria for administering the act rather than who actually does it.

ENFORCEMENT CONTROLS TO CUSTOMS SERVICE

Senator **Heinz**. One of the other devils referred to, at least insofar as their operation exodus is concerned, is the Customs Service. Somebody's made accusations that that has resulted in very long delays without getting things resolved.

But do you think it would be a good idea to transfer the primary responsibility for enforcement of our controls to the Customs Service as part of this act? Mr. Gray?

Mr. **Gray**. The same answer. If you can resolve the infighting between Commerce and the Customs people, and if we have the trained personnel.

Senator **Heinz**. How are we going to do that? That's clearly a problem.

Is there any other way to do it than to give more clear delineation of authority to one agency or the other?

Mr. **Gray**. Delineation of authority and trained people. People will have to be trained. The arguments will have to be muted.

Senator **Heinz**. You really don't think it makes much difference whether we give primary enforcement responsibility here to Customs?

Mr. **Gray**. Not if it's appropriately staffed.

Senator **Heinz**. My sense is there isn't much disagreement with that comment; is that correct? And does anybody feel differently than that?

Mr. **Henriques**. I don't think there's any reason that's been advocated that says it's better there than allowing Commerce to maintain it, the control.

Senator **Heinz**. Let's talk about foreign availability for a moment. My legislation does ask the Commerce Department and the Government to assume the heavier burden of availability—excuse me, a heavier burden of proof with respect to foreign availability.

Mr. Perle seemed to indicate that he felt that that would result in a risk of the export of technologies that were critical.

Why is he wrong, or is he right? Mr. Henriques?

Mr. **Henriques**. One of the things Mr. Perle also said was that here seemed to be heavy reliance on the marketplace, on the manufacturers, to know what's out there.

We had talked in our statement about a voluntary cooperation between the industry and the Department—the Commerce Department specifically in assessing what that foreign availabilty really is.

I think clearly the past 10 or 15 years have indicated that perhaps industry knew better what was available out there in the foreign availability area than either the Defense Department or the Department of Commerce.

Senator **Heinz**. Very well. A number of you have mentioned lost business due to the unilateral application of national security export controls.

Mr. Gray, can you document any cases for the record where we have lost some specific export business, particularly in the face of foreign availability?

PRODUCTION IN THE SOVIET UNION

Mr. GRAY. Mr. Chairman, a few months ago I spent some time in the Soviet Union and I had an opportunity to visit privately with the president of Stanko Import, Mr. Lobtiev. I also had an opportunity to visit the Autovaz plant at Togliatti and the Kama River factory, which is an enormous truck factory.

They produce 700,000 automobiles a year. Less than 3 percent of the machine tools that are in that factory today were manufactured in the United States, and to the best of my ability, most of them were what we could call common garden variety G-destination machine tools.

They have now let the orders for the new front-end drive. Those orders have all been let. No Americans have been invited to bid.

They're also in the process of putting in their fourth assembly line. No Americans have been asked to bid. They're in the process of building a new parts factory; Americans have not been asked to bid.

The Cheljabinsk tractor factory has been expanded and upgraded. Those orders have all been let. No American equipment included in that.

Senator HEINZ. Is that an argument, though, against the application of foreign policy controls? Is that a result of the Yamal pipeline decision?

Mr. GRAY. Some of it is the failure, the unwillingness to supply spare parts and service to the Kama River factory. Incidentally, less than 6 percent of the machine tools in that factory came from the United States.

So when they talk about the trucks being built on U.S. technology, it's a little bit misleading.

There are any number of projects. The Don River harvester combine, which will be in production by late 1985, those specs are now out. We were not asked to bid on that.

Moving on to consumer products at Promshimport. There are turnkey projects that are being developed now for the production of stoves, refrigerators, washing machines, electric motors for those products, cement factories, woodworking machinery for furniture, spring-coiling machines for springs for mattresses; there are a number of automobile factories that are in for upgrading and expansion. We are not being asked to bid on those projects. The reason they give us are: they want to know that they are going to be able to get spare parts and service after the machines are sold.

There is another aspect to it as well, and I think this is equally as important.

Senator HEINZ. So we're losing two ways there. One, we're losing because we have the reputation as an unreliable supplier. Second, we're losing because even if we decided we didn't want to sell, there would be plenty of other people to supply those parts that are commonly available.

Mr. GRAY. That's correct. There is one other point I would like to make on that.

American companies are not being as aggressive as they could be to get that business, even though it is G destination. The reason is these are small companies. Without political risk insurance against the actions of our own Government, they are afraid of ending up with a lot of iron on their floor, and they'll go bankrupt. I think that's a very significant point.

ALLIES SELL TO COMMUNIST COUNTRIES

Senator HEINZ. That's a well taken point. Let me move along here a little bit. It's been alleged that our allies have licensed numerically controlled machine tools to Communist countries which we would be unable to sell under the Cocom list.

Do you know of any such instances?

Mr. GRAY. Yes. The Japanese have licensed the Hungarians and the Rumanians to build a very sophisticated, extremely accurate, five-axis machining center. When we report a lot of these cases to the Defense and Commerce Departments they were always denied. This time, the Hungarians brought one of their machines to our International Machine Tool show in Chicago, and demonstrated it, last September. I also have with me——

Senator HEINZ. That's the Hungarians who brought——

Mr. GRAY. That was a licensed machine by the Japanese. They not only sold them the equipment; they licensed them to build a five-axis machine. We can't even sell them a three-axis machine.

Senator HEINZ. What happens when you inform Commerce or Defense?

Mr. GRAY. They're as upset about it as we are, and they now believe it, because the evidence was there.

Senator HEINZ. But prior to that time they didn't believe it?

Mr. GRAY. I can't speculate on how—whether or not they believed it. Certainly nothing has been done. We have been telling them these things for years.

This is a picture of a Soviet machine, a horizontal machining center, that was displayed in Osaka in November 1982 with a Fanuc, System 6M, control with bubble memory on it. That control went to the Soviet Union to be interfaced with this machine and was brought back to Japan for display and sale.

Another example is Fanuc's licensing of the Chinese to build their System 5 and System 7 SC axis controls. This particular control happens to be a four-axis. You can see the axes on the photograph.

Senator HEINZ. These are all on the Cocom list? And Japan is a participant in Cocom; is that right?

Mr. GRAY. That's correct.

Senator HEINZ. Why do you suppose the Japanese do this? They look at the list. They see that the product is there, the technology is there, yet they go ahead and sell anyway. Are they just thumbing their nose at the United States and Western Europe?

Mr. GRAY. My presumption is that they think we're a bunch of chumps. They go into the Cocom meetings, and they agree not to sell things. The difference is we're sending men like Richard Perle and Larry Brady; the other countries are sending businessmen to represent them, and they have a different view when they enter these negotiations.

I don't agree with Mr. Perle when he says that the violation situation has improved in recent years. I think it's escalating. The thing that concerns me is that the combination of the worldwide recession and the integrated manufacturing systems the Japanese have installed in their machine tool industry have provided them with an inventory overhang of sophisticated machine tools. They can hold those machines just so long. Then they are going to go someplace, and there is a ready market in the Communist countries for that kind of equipment. That's our concern.

SHORTENING LICENSING TIME

Senator HEINZ. Let me ask you about a somewhat related question on the processing of licenses. As you know, my legislation calls for the reduction in the licensing time by about a third. From what I hear, most people at the table support shortening the licensing time.

But my question to you is: Are there sufficient qualified people at Commerce and DOD to handle the requirements that would be imposed upon them as a result of such tight deadlines?

Mr. Gray, can you comment?

Mr. GRAY. With all due respect, I believe the Defense Department does need some people that are qualified in the area of machine tools and robotics. There are more technically qualified people at Commerce, but even there, the technology has moved very, very rapidly. I would strongly urge them, for the new job slots that are opening, that they get people that are qualified.

Senator HEINZ. Mr. Gleason, what do you think?

Mr. GLEASON. One of the areas that Commerce has improved on greatly in the last several years has been in the processing of license applications; however, both in Commerce and Defense, there is a real scarcity of people who know the application of the electronic components, who understand what the equipment is going to be used for, yet judgments are very often made in terms of the licensing on the basis of the end use, rather than the piece of equipment itself. I think they could use better staff or additional staff skilled in the end use of products.

Senator HEINZ. Mr. DeRose?

Mr. DEROSE. We would like to see the number of license applications come down, and we think those people can do a solid job.

Going back to your earlier query on foreign availability, in terms of analyzing what is available abroad, if we could exclude from that analysis what's available in the Cocom countries, the problem would become much more manageable, because if we have a common understanding with our allies, we should really not have to worry about what's available.

Senator HEINZ. In theory, that's right, but Mr. Gray has just explained in some lurid detail how well that seems to be working.

Mr. DEROSE. He's describing an area that I am not familiar with.

Senator HEINZ. You should be so lucky.

Mr. **DeRose**. Looking at some other areas that we are familiar with, we do not see quite that distortion in trade.

Senator **Heinz**. I guess in your case, at least insofar as software is concerned, there are still people who need your software, and are willing to do almost anything to get it. Got caught doing it.

Mr. Henriques, do you have a comment?

Mr. **Henriques**. As we stated, the number of controlled technologies or products or materials can be reduced, and the efforts concentrated on reduced areas. Then it's highly probable that there are enough people in Commerce. There's always a concern about upgrading the skills of the people who work for the Government. They should have the same kinds of opportunities that people in industry have, to learn new skills on a continuing basis.

Senator **Heinz**. Are you talking more about Mr. DeRose's proposal for a special general license or a qualified license?

Mr. **Henriques**. That, too, but we also recommend very strongly that there be a reduction in the MCTL, a significant reduction in the MCTL, so there wouldn't have to be that many licenses. They wouldn't have to have the scrutiny or the security controls problem.

Senator **Heinz**. Mr. Frischkorn?

Mr. **Frischkorn**. I can't see any reason why there shouldn't be a substantial reduction in the application processing time, at least for applications for products going to non-Communist countries. This would be possible if we reduce the licensing requirements for Cocom countries as we have suggested. Our foreign competitors, including Cocom member countries, grant applications in a few days to a week. The businessman just has to go in and say he wants a license. This is for non-Cocom-type cases. I would like to see the resources of the Commerce Department increased to where they could process noncontroversial applications in anywhere from 1 to 2 weeks.

Certainly, there also needs to be an upgrading of the technical skills of the export administration staff. They're woefully short on engineers who really understand the high-technology products that are processed there.

Senator **Heinz**. I would appreciate it if, for the record, any of you could cite specific instances where lengthy licensing delays resulted in lost export business. I won't ask you to do that on the record here. I would like you to specify, if you would, for the record, what the dollar value of that lost business might be.

[Response to questions of Senator Heinz and response to written questions of Senator Garn follow:]

GTE

General Telephone &
Electronics Corporation

1120 Connecticut Avenue, N.W.
Washington, D. C. 20036
202 293 2800

Allen R. Frischkorn, Jr.
Assistant Vice President
Government Relations
Products Operations

March 18, 1983

Honorable
John Heinz
443 Russell Senate Office Building
Washington, D.C. 20510

Re: Export Administration Act
Reauthorization

Dear Senator Heinz:

I am transmitting herewith the corrected copy of the transcript of my testimony on behalf of EIA at the March 3, 1983 hearing on renewal and reauthorization of the Export Administration Act of 1979, and responses to several questions raised by Senator Garn, which you transmitted to me.

In addition, at the hearing you asked witnesses to cite specific instances where lengthy licensing delays have resulted in lost export business. While we cannot cite specific instances without canvassing the EIA membership, which was not practical in the short time since the hearing, EIA believes that it is self evident that licensing delays result in lost sales to U.S. companies. Generally speaking, there are two types of licensing delays - - 1) delays resulting from the review process, and 2) delays resulting from administrative problems.

Delays resulting from the review process are most frequently associated with products and technologies destined for East Bloc countries or countries with which the United States has strained relations. U.S. companies are considered unreliable suppliers when licenses become caught up for long periods in the review process. There are many other countries that can and will provide many products and technologies without the long delays associated with license application reviews. The goal of the U. S. should be to compress the review period as much as possible. Uncertainty is the problem - - a quick "no"

. . .

answer at least lets the U.S. company and its foreign customer know where they stand.

The second type of licensing delay is most frequently associated with routine applications to free world countries. Because of minor discrepancies in applications, administrative policy changes and human error, routine license applications may take up to three months to clear the administrative process. Foreign buyers cannot understand such delays and often complain and threaten to terminate contracts. Non-controversial export licenses are usually granted by our free world allies in a couple of days to a week. The aim of the U.S. should be to process non-controversial free world license applications in the fastest possible time.

EIA is happy to have the opportunity to present its views on the renewal of the Export Administration Act. Please call on us if we can provide additional information.

Respectfully,

Allen R. Frischkorn, Jr.

ARF/mrm
Encl.

RESPONSES TO QUESTIONS RAISED BY SENATOR GARN

1. In your written testimony you make some helpful suggestions that merit serious consideration. Toward the end of your statement, however, (p. 17) you make a very paradoxical observation. You state that the Commerce Department, "because of its trade promotion activities" "is uniquely qualified to objectively balance national security, economic and trade considerations." Would you please explain how the Commerce Department is enhanced in its objectivity by its trade promotion activities, when trade promotion is one of the most important factors to be weighed in the balance? Why would not DoD be equally qualified because of its security promotion role and experience? Shouldn't objectivity be sought in an agency that has none of these biases?

1. Because of its export promotion activities, the Commerce Department has a developed capability to assess economic impact. This capability, which is unique in the Federal Government, enables the Export Administration to easily access information on the economic impact of its control activities. Moreover, EIA believes that objectivity is more a function of personnel than of organizational structure. Transferring the control function to an independent agency would, therefore, not necessarily make decisions any more or any less objective. The present structure which gives the Department of Defense a strong voice in control decisions appears to us to be biased towards national security concerns rather than economic concerns.

2. In your written testimony you note that the export administration program of the Commerce Department, "does not receive adequate financial resources to perform its responsibilities in the least burdensome manner possible." I would tend to agree with you. Yet, since before the 1979 Act the Congress has never once given the Administration -- Republican or Democrat -- less than it has requested for export administration. If export administration does not have adequate resources, where does the fault lie?

2. The fact that the Commerce Department has not received adequate financial resources for its export control program is probably due to the fact that the need for expeditious handling has been given a low priority by both Democratic and Republican administrations. However, due to the increasing importance of exports to our national economic well being, and the fact that controlled commodities are among this nation's most exportable, it is imperative that the control system be given a higher priority. EIA believes that the time has come for both Congress and the Administration to allocate greater resources to the export control program.

3. Do you oppose giving the Customs Service the responsibility for the criminal enforcement of the Export Administration Act, and if so, is there any form in which you would support this, or is your opposition unequivocal? Why?

3. EIA believes that the Commerce Department should continue to have primary responsibility for criminal enforcement of the Export Administration Act. However, we also believe that the Customs Service can provide the necessary surveillance because of its greater manpower in the field.

4. Would you support the conversion of the Federal Trade Commission into an office within the Department of Commerce, headed by a Deputy Assistant Secretary?

4. As noted in the response to Question 1, bias is more a factor of personnel than of organizational structure. Moreover, including a regulatory agency in a cabinet level office with broader responsibilities does not present an inherent contradiction. For example, the Federal Energy Regulatory Commission, a regulatory agency, is part of the Department of Energy.

5. If responsibility for export administration were to remain the responsibility of the Commerce Department, would you favor making the head of that operation an Under Secretary of Commerce, with no responsibilities other than administering our export control laws?

5. Conceptually, EIA has no problem with the proposal to have a separate Under Secretary of Commerce for administering the export control laws. However, we do not believe that a change in the present organizational structure is warranted.

QUESTONS FOR INDUSTRY PANEL FROM SENATOR GARN

1. Do you oppose giving the Customs Service the responsibility for the criminal enforcement of the Export Administration Act, and if so, is there any form in which you would support this, or is your opposition unequivocal? Why?

2. Would you support the conversion of the Federal Trade Commission into an office within the Department of Commerce, headed by a Deputy Assistant Secretary?

3. If responsibility for export administration were to remain the responsibility of the Commerce Department, would you favor making the head of that operation an Under Secretary of Commerce, with no responsibilities other than administering our export control laws?

ANSWERS

1. We believe that the Department of Commerce should maintain primary responsibility for the Export Administration Act, but should work closely with other agencies on the enforcement aspects of export administration. We would expect the DOC to co-ordinate enforcement with the Customs Service, the FBI and other intelligence agencies, in order to ensure effective inspection and control and at the same time avoid needless interference with lawful shipments. This would entail access for these other agencies to the licensing files of the Office of Export Administration of the DOC. In addition, we strongly recommend that the commodity control list numbers be modified to correspond to the more precise International Harmonized Systems codes—a system with which customs is familiar.

2. We have no opinion on the proposed changes in the jurisdiction of the FTC.

3. We feel that the new management system within DOC is working adequately at the present time, and do not see the necessity of creating a new Under Secretary to handle export administration. However, we would not find it unreasonable to elevate the head of the Office of Export Administration to the level of an Assistant Secretary.

Senator HEINZ. One thing you could answer verbally is this: If it is true that license processing periods have caused significant delays in shipping—well, I think I will ask you—I may send you another question for the record. I don't really need to ask you this.

Gentlemen, thank you very much. You have been extremely helpful. You have given us some good testimony on a number of things that are under active consideration. We will probably see you again on some future occasions. Thank you very much.

[Whereupon, at 1:35 p.m., the hearing was adjourned.]

[Additional material received for the record follows:]

Statement of George M. Heenan
Control Data Corporation
for the American Electronics Association

before the

Subcommittee on International Finance
& Monetary Policy
Committee on Banking, Housing and Urban Affairs
United States Senate

March 2, 1983

Summary

Recognizing the need for effective controls on goods and technologies that can make direct and significant contributors to adversary military capabilities, AEA proposes:

- Policy emphasis on enforcing existing controls more effectively rather than broadening them;
- Strengthen CoCOM and seek agreements with non-CoCOM countries that parellel CoCOM levels as closely as possible;
- Eliminate unilateral controls;
- Increase reliance on our companies' proprietary interest in protecting their own data and technology; and
- Commerce should accept the applicant's assertions of foreign availability unless able to present evidence to the contrary, thus placing the burden of proof on the government.

AEA American Electronics Association
1612 K Street, N.W., Washington, D.C. 20006

Statement of George M. Heenan
Control Data Corporation
for the American Electronics Association
Before the
Subcommittee on International Finance
& Monetary Policy
Committee on Banking, Housing and Urban Affairs
United States Senate
March 2, 1983

Mr. Chairman and Members of this Distinguished Committee:

I am George Heenan, Vice President for Strategic Plans and Programs for Control Data Corporation based in Minneapolis, Minnesota. Control Data is a manufacturer of large scale computers and a providor of data services. We have a vital interest in international trade and in U.S. policies which can affect that trade. I am appearing before you today on behalf of the American Electronics Association, of whose Board of Directors I am a past member. AEA is a trade association of 2,000 plus electronics companies in 43 states. Our members manufacture electronic components and systems or supply products and services in the information processing industries. Our member companies are mostly small rapidly growing businesses currently employing fewer than 200 people.

AEA member companies have a vital stake in exports and international trade. In some of the larger companies, half of their sales are to overseas customers. Electronics companies contribute a favorable balance of trade as a partial offset to an unfavorable balance incurred by oil and other imports. In 1981, electronics products produced a favorable trade balance of over $5 billion dollars, with electronic industrial products contributing a favorable balance to excess of $10 billion dollars.

Technological Leadership Is Our Most Valuable National Resource

The quality of life of American citizens depends upon having a strong economy which is able to produce an abundance of goods and services and also provide enough well-paying jobs. Our quality of life also depends upon a strong national defense that makes any attack by foreign aggressors unthinkable. Technology is the key to both a strong economy and a strong defense. I'll elaborate.

- Technological innovation is fundamental to economic growth. We are able to grow when we find better, more efficient ways to do do things and when we develop new products that meet unfulfilled consumer needs at home and abroad. Professor R. Solow of the Massachusetts Institute of Technology confirmed this in a study showing that approximately 80% of the growth in the GNP of the United States between 1909 and 1949 was due to technological change.
- Technological innovation is fundamental to productivity improvements. Through the ages, the physical capabilities of people have been enhanced by machinery, leaving more time for intellectual activities. More recently, the power of the human intellect has been extended by computers, data storage, communications systems, and visual display devices. Now we are entering the age of robotics in which the two are combined to do certain work more effectively and

efficiently than ever before. It's not surprising that a recent Brookings Institution study determined that more than one-half of the productivity increases in the United States between 1948 and 1969 were the direct result of technological innovation.

- Technological innovation is fundamental to international trade competitiveness. In recent years, while the export performance of the United States has produced some disturbing trends with trade deficits of \$26.5 billion in 1977, \$28.4 billion in 1978, and \$24.7 billion in 1979, exports of R&D-intensive products (e.g., high technology electronics, capital equipment and pharmaceuticals) have shown excellent growth. From 1960 to 1979, R&D-intensive manufacturing industries increased their export surplus from \$5.9 billion to \$39.3 billion. During the same period, the trade balance of industries without technological bases declined from near zero to a negative \$34.8 billion. With our trading partners recognizing the importance of innovation and technology, it is becoming even more important to emphasize technology advancement as the key to competitiveness at home and abroad.
- Technological innovation is fundamental to a strong national defense. If we assume that maintaining parity in weapons with the Soviet Union is essential to a strong national defense, we must rely on technology and its implementation in weapons systems as the basis for our defense strategy.

Over the past decade, the Soviet Union has eroded much of the advantage we used to have by improving the power and accuracy of their strategic weapons and by increasing dramatically the amount of military equipment they produce. Although the situation is not yet desperate, the trends are frightening and need to be reversed immediately.

We can't reverse the trends by trying to regain numerical superiority. That approach would be financially infeasible and ineffective. However, we can reverse the trends by using our technology, which in important areas is far more advanced than the Russians'. We have the technology to make our munitions more accurate, our aircraft, submarines, and missiles more difficult to detect, and our surveillance and electronic warfare systems more effective. In the 1980's, our defense must be based on the use of finesse through technological innovation rather than on pure force.

National Security Export Controls

In line with the industries' support of a strong system of national security, AEA endorses the application of controls to restrict the export of goods and technology that would make a significant contribution to the military potential of any country that would prove detrimental to the national security of the United States.

The challenge is how to focus the national security controls mechanism so that only those goods and technology that need to be controlled for purposes of national security, are in fact controlled. The present system of national security does not provide this critical focus. The list of controlled items includes some technical data and products which are militarily insignificant and may also be available from foreign competitors. Millions of dollars for administrative costs are spent needlessly each year by industry and government due to the government's broad application of controls. The delay and uncertainty involved in obtaining validated licenses entail considerable losses in terms of present export orders and future distrust of American businesses as reliable suppliers. The present licensing system handicaps American exports as they attempt to compete in the World market.

In many instances, national security controls have broad multilateral recognition and support by our allies. The Coordinating Committee on Export Controls (CoCOM) develops lists of military, nuclear energy and other strategic items which has been agreed should not be exported to communist countries. CoCOM is composed of our NATO allies (except Iceland) and Japan. The United States has expressed strong support for CoCOM, however, the United States policy towards national security has differed from the policy of our CoCOM partners. National security reasons have been stated to denv licenses to free world destinations; other CoCOM members do not. The United States controls technical data to free world distinations; only Germany and Japan do anything similar, and then only for truly strategic commodities. The only country the United States does not require an export license, is Canada; the United Kingdom, Japan and France do not require export licenses for goods shipped to many countries.

The objective of Congress in the Export Administration Act of 1979 was the promotion of United States exports. The Executive Branch has thwarted this objective by the imposition of blanket controls where a more focussed licensing procedure would suffice.

The following are recommendations, that if incorporated into the Export Administration Act would conform our export control policy more closely to that of our allies, eliminate unnecessary administrative work for industry and government, and would improve the United States companies' international competitiveness without affecting our national security.

Better Enforcement Needed Rather Than Stricter Unilateral Licensing Burdens for Legitimate, Licensed Exports

The Export Administration Act (EAA) should provide the Commerce Department and Customs Service more resources to insure compliance with existing licensing requirements. It's important not to confuse increased enforcement with increased licensing burdens. The "leakage" of militarily sensitive technology to the Soviet Union, so heavily publicized recently results mostly from illegal (e.g. diversion) or non-trade (theft, espionage) activities, despite licensing restrictions and penalties for violations. Stricter licensing requirements and burdens on legitimate United States exporters and their affiliates overseas will further erode competitiveness, while attacking the "leakage" problem at the margin. We would therefore recommend:

- Authorize more moneys for OEA enforcement;
- Establish industry/government group to encourage/structure voluntary cooperation effort for enforcement; and
- Encourage voluntary self disclosures of inadvertant violations.

Aggressive High Technology Exporting Is Key to United States Security

The key problem for United States control policy for commercial exports is how to maintain and strengthen our high technology industries through exporting while through controls deprive our adversaries of those few truly militarily critical technologies. Both these policy objectives must be pursued.

Our military's technological lead has become directly dependent upon the health and innovativeness of the high technology commercial sector. This sector's continued advances in semiconductors, computers, instruments, etc. depends in turn on its ability to continue to compete with foreign firms which are often aided by their respective governments, and which are not carrying the export control burdens and uncertainties United States firms must. Greater controls over legitimate exports could make United States firms' business more costly or less reliable, and hence less competitive. Overemphasis on controls could damage our long term security needs. We would therefore recommend:

- Policy sections of EAA should be strengthened; and
- Licensing requirements reduced, especially to the Free World.

Multilateral Controls and Foreign Availability

The United States simply does not have a monopoly on sophisticated products and technologies. Despite Congress' clear direction to adjust our export control system to take into account this "foreign availability", virtually nothing has been done since 1979.

Many foreign firms possess equivalent products and technologies. These firms are not just in CoCOM countries, with which the United States cooperates in a multilateral control scheme, but in countries over which neither the United States nor CoCOM exercises any control. Even among CoCOM countries, the United States exercises controls over more items, and imposes control mechanisms that are broader and more burdensome, than its CoCOM partners.

Our key policy objective is to deprive the Soviet Union of certain purchases, and we simply cannot do so in many areas due to this "foreign availability". Simply denying United States exports neither keeps the item from our adversaries nor helps our industrial base with those export revenues. Likewise, maintaining burdensome licensing requirements for products and technologies which are available in world markets without such controls is diverting our government export control resources from more effective activities. To the extent United States controls reach beyond our borders, demonstrate lack of confidence in our CoCOM "partners", and a lack of realism as to what can effectively be controlled, our efforts to keep certain militarily critical technologies from our adversaries through multilateral efforts is weakened. We would therefore recommend:

- Establish an interagency task force, chaired by Commerce and advised by a special industry advisory group, to reduce or eliminate items from the Commodity Control List (CCL) which are available in sufficent quantity and quality. Prerequisite for Militarily Critical Technologies List (MCTL) incorporation;
- Fund the Commerce Department and interagency task force in amounts adequate for a full-scale effort on this issue, which should be an ongoing one;
- Require that items be removed from validated license controls if they are available from foreign sources or possessed by adversary countries;

- Eliminate validated license controls over exports to CoCOM countries, Australia, New Zealand and other countries with which the United States has bilateral or multilateral agreements with regard to export controls;
- Mandate that the United States seek agreements with non-CoCOM countries that parallel CoCOM levels as closely as possible;
- Eliminate unilateral United States controls except where the United States is the sole source of a particular military critical product or technology;
- Utilize the Harmonized Commodity Description and Coding System for export control purposes; and
- Require Commerce to report to Congress quarterly on the implementation of the foreign availability requirement under the Act.

Technical Data: Need To Focus Controls On Problems, and Allow for Realities Of Doing Business in World Markets

In 1979 Congress directed the Secretaries of Commerce and Defense to implement the recommendations of the 1976 Defense Science Board to refocus United States export controls away from products toward "Militarily Critical Technologies". Unfortunately, little has been done in four years to reduce controls over product exports, and a recent initial Defense Department proposal to increase controls over technical data exports to all destinations could completely swamp business and the government with unnecessary paperwork.

For exports to the Free World, Congress and the Export Administration Regulations (EARs) have properly chosen to rely on the proprietary interests of high technology firms, and the measures they take to protect their knowhow from competitors: elaborate security measures and contractual penalties on employees and third parties for unauthorized disclosures of proprietary technical data. In addition, the United States license GTDR (General Technical Data Restricted) carries with it severe civil and criminal penalties for unauthorized disclosures.

Given this, and the enormous volume of transactions involving technical data in the Free World, if any increased restrictions on flows of technical data are felt necessary, they should be targeted to transactions involving non-U.S.-controlled parties in non-allied countries which, because of the particular recipient, are suspected as possible diversion risks. To do otherwise would entail enormous paperwork burdens and increased costs on business and government alike, strains with our allies, and government resources diverted from enforcement and East-West transactions. Any increased licensing restrictions on technical data exports to Free World countries should be aimed at restricting East-West, and not Free World, trade. In addition, before these new controls are imposed, they must be evaluated for "foreign availability", and the MCTL refined and narrowed so that it's clear to every exporter what is and is not covered. These steps have not yet been taken. We would therefore recommend:

- State Congressional intent that the MCTL is only to be implemented and used for validated license requirements for exports and reexports to adversary countries, and to countries and overseas consignees the United States government has reason to believe there is a distinct likelihood that unauthorized reexport or diversion would take place;

- State Congress' intent to rely whenever possible on the internal proprietary interests of high technology companies;
- State the denials for shipments to Western countries may only be based on the likelihood of a particular consignee diverting or reexporting U.S.-origin goods or technology;
- Require that before technical data restrictions are imposed on Free World shipments, that the MCTL be refined and that it be reviewed for "uncontrolled foreign availability"; and
- Establish a comprehensive bulk license for firms to support their international manufacturing, sales and service operations in Western countries without the need for individual validated licenses.

License Resources Need To Be Increased; Licensing Burdens Reduced

The primary responsibility for administering export controls should remain in the Department of Commerce, and increased resources should be devoted to this mission. Removing this responsibility from Commerce would de-emphasize economic considerations in export control decisions and would therefore exacerbate present problems of excessive controls.

The current Administration recognized the need for more rapid decisions and had initially reduced the licensing backlog. Licensing applications have increased, however, as exporters have been made aware of controls due to Project Exodus. The effort required to achieve this reduction should be continued to prevent the backlog from growing again and so that even more rapid responses, better than the current Congressionally mandated times can be attained and sustained. United States exporters have found that licensing delays inhibit normal customer relations, tie up expensive inventories and ultimately divert business permanently to foreign competitors who are not so encumbered. We would therefore recommend:

- Authorize more funds for Office of Export Administration (OEA) and Department of Defense (DOD) licensing functions. Include language in Committee report recommending that DOD make license processing a key part of outside experts' job;
- Require that Commerce may not Return Without Approval (RWA) applications due to changes in documentation requirements not published in the EARs at the time of application, unless such requirements may not be published because of national security or foreign policy reasons;
- Provide at least 30 days for license appeal and require Commerce to provide adequate information on national

security denials to allow exporters to avail themselves of congressionally provided appeal process; and

- Establish an administrative Operating Committee or an Advisory Committee Export Policy to monitor and improve interagency license flow process, and implement new control policies smoothly.

Mr. Chairman, I would like to take this opportunity to compliment you for the leadership you have shown in addressing some of the major problems associated with the implementation of present U.S. export control policy. The major focus of our testimony will be with respect to the national security provisions of the Export Administration Act.

Your bill, S.397, addresses foreign availability in requiring the Office of Export Administration and Department of Defense to report quarterly on the operation and improvement of the government's ability to access foreign availability including training of personnel and use of computers. Also, under national security controls, Commerce would accept the applicant's assertions of foreign availability unless able to present evidence to the contrary thus placing the burden of proof on the government. The implementation of this reporting system and Commerce's working with applicants in assessing foreign availability will assist in maintaining the competitiveness of the U.S. industry.

Senator Garn's bill, S.434, would create an independent agency to administer U.S. export control policies. AEA would oppose the idea of creating a separate agency as there is a great concern that such an organization by removing or diluting the business perspective that the Commerce Department brings to its deliberations on export controls may result in inappropriate control of U.S. exports.

AEA believes that there are more important issues than the actual location of export control responsibilities that need to be addressed.

Biographic Sketch of Theodore L. Thau

Mr. Theodore L. Thau is a former employee of the Federal Government, now retired, living in Salinas, Calif. A biographical sketch of Mr. Thau is attached. At the request of the chairman of the committee, Mr. Thau submitted his comments on the testimony delivered by the various business representatives who testified at the subcommittee hearing held on March 2, 1983. These comments follow.

From 1948 to 1961 I was the attorney in charge of the legal aspects of the enforcement of U.S. export controls in the Commerce Department. With a small staff of lawyers I was responsible for administrative prosecution of the several thousand cases of violations of controls unearthed by the export control investigators, foreign service officers, and Customs agents. Appropriate cases were prepared for the Justice Department to bring criminal prosecutions or for Customs seizures of goods being exported unlawfully. Others were brought before hearing examiners for denials of export privileges. In addition, I was concerned with development of rules, procedures and forms to improve enforcement, and participated in conferences abroad to tighten enforcement of agreed multilateral controls.

From 1961 to 1972 I was Executive Secretary of the Export Control (Administration) Review Board, the cabinet-level group comprised of the Secretaries of Commerce, State and Defense, which was responsible for agreeing on export control policies and deciding those licensing cases that could not be agreed on at lower levels. I was also Executive Secretary of the Advisory Committee on Export Control Policy, the Assistant Secretary-level interdepartmental group which undertook to hear and resolve staff level differences on policies and licensing cases prior to, and hopefully in lieu of, having to be reviewed by the cabinet-level body. I was also Chairman of the Operating Committee, the staff level interdepartmental committee which met one or more times each week, the year around, to review, and hopefully arrive at agreement from all members on my recommendations on proposed policy determinations and licensing actions. I held these three positions aobut 11 years, longer than any incumbent before or since.

I joined Commerce in 1948, at the beginning of the Cold War, and as one of a small group brought in to create an export control enforcement program appropriate to the expected demands of the Cold War. A Senate Committee investigation, then pending, had revealed serious deficiencies in export control enforcement, as well as licensing, in the early post-World War II short supply export control period.

Previously, I was Assistant to the Solicitor of the Securities and Exchange Commission, and practiced law in Chicago and New York City. I received my undergraduate and law degrees from the University of Chicago, in 1932 and 1934.

Since retiring to California in 1974, I have been appointed to positions in Monterey County government, i.e., the Assessment Appeals Board and the Social Services Commission, and have been teaching parttime at the local college (Hartnell).

Theodore L. Thau-

Comments on Allen Frischkorn Statement for EIA

General Observations:

EIA's criticisms of national security export controls as too broad, paper exercises, etc., are the same as those made by industry in Congressional hearings on replacement of the 1949 Export Control Act by the 1969 Export Administration Act, and on replacement of the latter by the 1979 Export Administration Act. When one considers the immense reductions of security export controls brought about by the 1969 and 1979 Acts, such as, reduction of paper work, increases of general licenses, shrinkage of validated license lists, and the short time the 1979 Act has been in effect, one may question the wisdom of current proposals to shrink national security controls even further, without allowing a reasonable time for the industry participation provisions to take effect.

The "reform" proposals now advanced may seem small, but taken in the context of the favorable Congressional responses to industry demands in 1969 and 1979, these present proposals are an example of the well-known "salami tactic". There will soon be nothing left of controls, but the pious protestations of industry in support of "national security", as a principle, but not a fact.

The GAO comments cited reveal ignorance of the purpose of validated licensing as an export control screen, arising possibly because the present Commerce administrators have no knowledge of the history of why such validated license procedures were adopted. Approving a validated license application is no proof that the requirement of a validated license was unnecessary; nor is approval of a large number. Validated licenses to friendly countries are required to prevent diversions and transhipments to unfriendly countries. The application form requires the exporter to disclose his knowledge or lack of knowledge of the nature of the commodity and quantity ordered, the identities of the foreign parties, the intermediate and ultimate destinations, and the represented end use. The application has to be accompanied by a statement from the foreign ultimate consignee, giving his representations of destination and end use. If the shipment is to a COCOM country, a COCOM import certificate will be the substitute for the consignee statement, if the commodity is on the COCOM list. Approval of licenses, in this setting, simply evidence that the system is working, but by no means show that it is unnecessary.

If EIA thinks many commodities are not of strategic significance, it should show that its participants in the technical review committees have tried to persuade Commerce and DOD to decontrol them, and that they have arbitrarily refused to do so. That is the avenue for reduction of control lists Congress has already provided. Why not use it? Let Congress have specifics of such differences over particular items.

The idea of setting up a system of general licenses for exports of strategic items to COCOM countries, on the assumption that those countries can and will prevent reshipments to unfriendly countries, flies in the face of historic facts. Most, if not all, COCOM countries have reasonably effective license and customs systems for controlling exports of their own domestic origin goods, and for controlling reexports of foreign origin goods which have become domesticated by entering their economies, i.e. paying import duties. But few, if any, COCOM countries have ever had any system for controlling onward movements, even to hostile countries, of foreign origin goods which move in transit through their customs facilities. In such cases, their customs are only concerned that the goods do not enter their commerce without payment of import duties. US export documentation is not seen by COCOM country officials in such in transit movements. Local freight forwarders may not even see such US bills of lading, letters of credit, invoices, etc. Goods may move by air or rail in sealed cars.

To persuade COCOM countries to set up an internal system of policing US shipments to make sure they get into and stay in their countries has proved vain, since the early 50s. A partial method, called the transit authorization certificate, (TAC), under which customs in a COCOM country would not allow foreign goods entry and exit in transit to a 3rd country, unless the goods were accompanied by a TAC showing that the source country knew and approved such 3rd country destination. But that system collapsed after a few years, as too expensive and not effective in part.

The proposed use of general licenses for shipments to COCOM countries would only reopen all these gates for transhipments and reexports. The likelihood of persuading those countries to change their customs and other procedures now is practically nil.

Validated licenses for shipments to COCOM countries, supported by import certificates issued by the COCOM importing country, have the virtue of telling the importing COCOM country to be on the watch for the shipment and to require its local importer to account for his use of the import certificate (where are the goods?). That system also has the virtue of assuring us that the COCOM country is going to police the import and will inform us if its importer claims he never got the goods or that they went elsewhere.

The EIA argument that our Justice Department would be able to enforce our laws even with a general license for exports to COCOM countries is ill-founded. They say the Shippers Export Declaration would be a record of shipment of the equipment to the COCOM country. But who signs the declaration? Only the exporter or his freight forwarder! Would either of these like to be held liable as an insurer that the goods got to and stayed in the COCOM country? Of course not. And, on what basis could we or the COCOM country hold the foreign parties to the general license transaction, with no required government documentation sought or received.

The EIA proposal for general license reexports from one COCOM country to another is another ingenuous scheme, that could only work if all COCOM countries agreed to police each other's shipments -- most unlikely for many reasons.

The DOD effort to develop a list of militarily critical technologies is mandated by the 1979 Act, and therefore outside my experience, except as it may be substantially like earlier efforts to determine strategically important technologies for special export control efforts by the US and possibly the other COCOM countries. Reviewing the Bucy Report, which appears to be a source of the current MCTL effort, I find it calls for primary emphasis on technology control by the US and COCOM, as the "long perspective", and even then, not to the exclusion of end products, however, when they are "critical items of direct military significance". More important, the 1979 Act does not appear to have followed an extremist interpretation of the Bucy Report, which I consider the view taken in this EIA statement. It may well be that Commerce and DOD consider that they are limiting product control to those which are critical and of direct military significance, while EIA thinks the review process has not gone far enough. But that disagreement ought to be resolved in the technical working groups of industry/government experts, not a cause for tinkering with the 1979 Act prematurely. Let's see examples, not generalities.

The EIA proposal that the US should, before increasing unilateral control over critical technologies, endeavor to get COCOM control over "agreed technologies which are critical". This would be tantamount to a program of trying to lock barns after the horses are stolen. A new US origin technology must be put under US control swiftly, lest it be licensed by the US originator to foreign firms, after which US control is most likely to be ineffective. To wait til COCOM agrees to control the technologies which are critical before doing anything unilaterally while we have power to do so is to wait til the cows come home. Indeed, as long as free world technology controls remain rudimentary and often ineffective, our only hope of controlling diversions and transhipments of US technology indirectly to hostile countries, via free world countries, is by swift imposition of US unilateral controls.

I do not know the 1981 Rand Corp. Study, which is cited by EIA for the proposition that US technology controls should be limited to those with fairly specific military application. Here, as above, I consider that the dispute between EIA and DOD regarding the latter's development of the MCT list should be forced out of the realm of generalizations, and made to focus on specific examples complained of by EIA.

EIA's complaint is that Commerce has failed to devote enough resources to carry out the foreign availability requirement of the 1979 Act. By phrasing the problem as one of determining only foreign availability, EIA oversimplifies the problem faced by any administrator of export controls. Availability of what? A foreign-made item identical to a US product? That is seldom the case, except when the foreign maker is producing the US article under licensing agreement or other such agreement with the US firm. So then the further problem is to determine if the foreign product is comparable to the US product. But that is much more difficult to ascertain, unless our government simply takes the US firm's word for it! What do we mean by computer comparability?

I was sometimes told by computer company personnel that a dozen small computers, linked together, could "do the job" that one large, powerful, sophisticated computer could do. Because the dozen small computers are available abroad, in new or used condition, they argued that we should treat these machines as comparable to our big machine, and approve the latter to a Communist country. Should I have accepted that argument? Should it be accepted now? It would largely nullify export controls, for there are few machines of even critical military importance that cannot be said to be *available* abroad in the form of some more costly, less-efficient, shorter-lived machine that could be said to "do the job". I can't believe the 1979 Act was intended to gut export controls to that degree. In addition, what about the further criteria of *quantitative* availability and the *time frame* in which the foreign article could be made available.

Much as Commerce's administration of export controls may fairly be criticized, it is well-nigh irresponsible for EIA to contend to Congress that Commerce's fault is simply failure to devote enough internal resources to answering the question of comparability for all controlled articles and technology. Based on my own experiences, I challenge EIA companies to make a sound, objective case, based on proof, not wishful thinking and pecuniarily motivated assumptions.

Another piece of unrealistic argumentation is EIA's contention that COCOM should be strengthened by making all the NATO countries and Japan sign a binding, enforceable treaty. Fine! But never to be achieved, short of World War III conditions, and probably not then. And, so, what is to be done about US export controls, in absence of such a treaty? Presumably, to drop our controls, since US companies are possibly deprived of business with the USSR, in what? In *strategic* goods and technologies, for they are the only ones left on the US list, after the culling done by Commerce since the 1969 Act. The EIA doesn't even deny that the items controlled have strategic uses. Their point is that we should draw lines between strategic, *more* strategic, and *most* strategic, and control only the last. That is a judgment question, however, on which their view must be taken with more than one grain of salt, in view of their pecuniary interests and lack of any defined responsibility to the American people.

This point is stressed in the EIA demand that the "economic impact" of export controls should be stressed more, and even may dictate abstaining from imposing controls in some cases, particularly toward free world countries. They urge that increased foreign sales are needed to create profits which could be used to develop improved R & D, and thus keep the US technological lead. I have heard this argument since the early 60s. Somehow, it is always the technology or equipment still kept under control that would, if freed, work this marvel - never the technology and equipment removed from control last month or last year. It is always the technology and equipment that is at the cutting edge of newness and strategic use that would, if removed from control, provide the financial return needed to create new technology and equipment. This is probably true, but it is an interesting revelation of the mainspring of business concern about export controls -- a concern that would continue to the day when one last item still remained on the control list. That would be the one needed to provide the financial strength required for development of new R & D.

Regarding foreign policy export controls, I believe the case for their continuation can best be made by State Department personnel. However, in my experience I found enough sound occasions for their imposition to justify continuation of authority for such controls in the law. Africa, the Middle East, Central and South America, and Southeast Asia are all areas where foreign policy problems have arisen, over the years, to justify fully the imposition of export controls over selected commodities and technology. In a few situations, control could in part be justified on national security grounds, though even in a case like Castro's Cuba, controls may be deemed necessary over articles not of strategic importance, but of industrial value, and therefore properly subject to control on foreign policy grounds.

I do not believe such controls should be stricken from the law, because foreign policy problems calling for such controls can erupt at any time, and without notice. To wait for Congress to approve such controls, on a case by case basis, would handicap the Executive's ability to move swiftly in the foreign relations field.

I assume that the International Emergency Economic Powers Act is an updating of the old 1917 War Powers Act, but I do not know what changes have been made and whether it would be an effective substitute for the power presently given by the 1979 export control law.

As I read EIA's statement on this subject it is a blunt challenge to the concept which has been a part of our governmental system since the beginning of our country, the use of our foreign trade as an instrument of US foreign policy. I would think Senators would generally be concerned about any proposal to repeal or seriously restrict that fundamental concept, certainly not without full debate of the constitutional ramifications. The difficulties of the Reagan Administration in regard to the proposed barring of gas pipeline equipment to the USSR should not be considered good cause for negating such a long standing US principle.

The proposal that foreign policy export controls should not apply to foreign subsidiaries and licensees of US firms is most unwise and unclear. It would rob US controls of any meaning, once an American firm acquired a foreign licensee or subsidiary. US firms operating from the US only would be subject to US control, and thus at a competitive disadvantage vis a vis those with foreign licensees or subsidiaries. They would be even induced to acquire or create such devices to circumvent US controls legally. To cope with such efforts, the US would have to be far more restrictive than it presently is in regard to requirements for licenses to export all US equipment and technology to the foreign licensees and subsidiaries -- which would be displeasing to US industry even more than the rare risk of applying US controls to foreign licensees and subsidiaries as at present.

Further, it is not clear whether EIA would have this US shore-line limit on US export controls apply to controls imposed also for national security reasons. EIA mentions only foreign policy controls now, but once it would be successful in that effort to hobble US controls, I am sure it would quickly seek to have the limitation apply to national security controls as well. And such an application would be seriously harmful to our national security interest, especially as so many US high technology firms operate throughout the free world via licensees and subsidiaries, making and assembling abroad the most advanced US equipment, such as computer and machine tools, with US origin technology and sometimes US component parts freely exported to their free world licensees and subsidiaries.

. The EIA proposal that foreign policy export controls should not have retroactive application, i.e., should not apply to outstanding contracts or be cause for cancellation of outstanding licenses, is another example of commercial retaliation to the recent gas pipeline episode that would prevent effective national use of foreign trade, an instrument of foreign policy. Coupled with the further proposal that foreign policy export controls not be invoked without prior public notice and opportunity for hearing, as well as advance notice to Congress, this retroactivity proposal would be a signal to business to make large and long term requirements contracts with firms in countries likely to be impacted by the controls. And, this anti-retroactivity proposal, coupled with the advance notice provisions, would lead to rush shipments under outstanding validated and general licenses -- thus largely frustrating the usually intended purpose of foreign policy export controls. (Don't be deceived by the oft-stated claim that other countries don't apply their export controls retroactively. The historic truth is that all countries do when they wish to, and don't when they don't wish to go so far -- it is always a measuring of the country's concern about its foreign policy in the particular case. The USSR also has used such controls retroactively when it chooses, though it boasts that it doesn't, thereby claiming superiority to capitalist countries like the US. Example, the Soviet unilateral cancellation of its contract to export oil to Israel. The US has tempered its retroactive use of such controls, as in the cases of the Soviet crack-downs on Hungary and Czechoslovakia. The US is as reliable a supplier as any other country, despite EIAs claim to the contrary. EIA argues as though the force majeure and restraint of princes clauses had never existed, whereas merchants of all countries have routinely included them in contracts for hundreds of years.)

Further, the EIA proposal to bar retroactive use of export controls is also said to be limited to foreign policy applications. But the danger exists that such a proposal may be pushed to apply to national security controls, as well. That would be dangerous in the extreme, especially coupled with the advance notice proposals, leaving the US powerless to block exports of highly strategic goods and technology to a new "enemy", if contracts were outstanding or licenses had been issued.

And, consider too the national injury caused by shortages that could ensue from extending this proposal to short supply situations. It is a path Congress should not even start down, the risks of national hurt being so grave.

The EIA proposal that import controls should be applied concurrently with foreign policy export controls is not objectionable to me, if conditioned to except imports of critical commodities. However, State and Commerce may perceive reasons to keep export and import controls separable, to be combined only in appropriate cases.

I have already commented adversely on the EIA proposals for advance public notices and comments, and Congressional hearings, before imposition of foreign policy import controls. I see no objection, however, to having such hearings by Congress, after the controls have gone into effect, with the possibility of having them terminated if not justified to the satisfaction of Congress. It would also be proper for Congress to ask the

Executive to justify such controls semiannually.

The EIA proposal for mitigation of penalities under the antiboycott provisions of the 1979 Act, in case of unintentional violations, sounds plausible. However, this proposal would excuse every company for the reckless or negligent acts of its officers and employees. As every lawyer knows, there is a large area of justifiable culpability, short of intentional violations. I refer to the areas of grossly careless and of negligent violations. We all know and approve of the application of tort and even criminal sanctions against persons found to have caused injury while driving a car recklessly or even merely negligently. Penalties are proper in such cases, monetary generally, but we agree that the law would be an inadequate protection if it only penalized intentional violations -- which is what EIA really seeks! There is nothing in the law applicable to business corporations that should excuse such legal entities from liability for reckless or negligent acts or omissions of its officers and employees. Company policies are on paper. Companies act by people. Antitrust and other such violations are always contrary to company policies. But that is no reason to excuse violations that occur, and can not be proven to have occurred intentionally. Violations by business corporations are more often of a reckless or negligent nature, rather than intentional, or at least can be made to appear so, since a corporation always acts through people who are more easily proven to be careless than intentional wrongdoers.

For this reason many laws designed to protect the public against harms caused by corporations acting through their officers and employees are so drafted as to provide for liability without proof of fault. Examples: violations of the Federal Food, Drug and Cosmetic Act. Under most state liquor laws the sale of liquor to a minor is deemed a violation without proof of knowledge or intent on the part of the seller. Why are such laws so tough? Because the danger of harm to a public interest is so great and the likelihood of being able to prove intentional wrong doing is so slight. The export control laws have had similar penalty without proof of fault provisions since the 1949 Act was passed, for the same reason.

If the antiboycott provisions were made punishable only for intentional violations, it is likely that they would never be enforceable. When could the government prove that corporate officers consciously schemed to violate its provisions? It is enough that the defense of negligent or reckless violation be taken into account in determining the size of the penalty.

With respect to the related EIA proposal not to apply the antiboycott provisions to violations voluntarily disclosed by the company, we have again a suggestion that sounds sensible. But, again, it blithely skims over a very difficult area of law enforcement. When is a violation voluntarily disclosed? When the policeman is breathing down the violator's back? And what do we say about a violator who first reaps the profit of his wrong, and then gets off the penalty hook by racing into the police station with his confession? Could we operate law enforcement on that basis generally? Of course not. Should enforcement of the antiboycott provisions be limited in this manner as a special situation? EIA does not say why. And finally, how many violations would be excused by voluntary disclosures after the event? One a month? One a year? I submit that this analysis reveals that EIAs proposals here are based on either ingenious or ingenuous thinking. But, either way they are without merit. The Customs Prior Disclosure program is not a good precedent.

EIAs proposal that more money and manpower be given to administer the export promotion objectives of the 1979 Act is obviously designed to support the Commerce Department's practices of resolving its conflict of interests by emphasizing even more its trade promotion interests at the expense of its export control duties. It is a glorification of the morally objectionable! It underscores to me the essentiality of enacting the Garn bill to transfer export controls from Commerce to an independent agency. It is shocking to read that Commerce's trade promotion bias makes it the best judge of balance between promotion and controls.

EIA proposes to tie up all export control decisions of a formal or informal nature, in administrative review proceedings before an independent agency, such as the Court of International Trade. This would be in addition to the existing two avenues for review of every agency action: (1) administratively through departmental channels, which include the appeals board, and go up to the Secretary; and (2) judicially in the Federal Courts in appropriate cases. No showing has been made that the existing avenues have been tried and found wanting. It is obvious from the list of types of informal administrative decisions that would be reviewable that export controls would be halted in its tracks by inexpensive, easily started appeals, designed to test its every action, with no penalty to a business organization for instituting frivolous appeals, or limitation on their number and frequency.

I have no adverse comment on EIA's proposal to expedite enforcement operations by Customs and Commerce relative to proposed seizures of exports.

However, I am skeptical of the proposed certification program whereby "responsible" exporters would be excused from routine inspections at the ports of exit. Such companies would soon be identified, and their personnel might then be tempted by wrongdoers to use their facilities as inspection free conduits for the goods of the wrongdoers. This is not a far-fetched possibility. Customs has had experiences on the import side where well-known, law abiding travelers have been "used" as innocent carriers by smugglers.

Theodore Thau Comments on Computer and Business Equipment Manufacturers Association (CBEMA) Statement of March 1983

Like the Frischkorn (EIA) statement, this one makes its bow to national security export controls for the purpose of denying "militarily critical" goods and technologies to unfriendly countries, and then sets forth a series of generalized charges of excessive administration of U.S. controls, leading to a set of proposals for reform which are unworkable and the imposition of which would be effective only to gut export controls of any real meaning and utility.

The assertion that by 1968 the U.S. was "the only country still actively engaged in economic warfare against the Communists" is a falsification of history. Under the 1949 Act, export controls were limited to goods and technology of a strategic character to such a degree that by the early 60's, Congress (House Select Committee) severely criticized the Commerce Department for not aiming controls at the Soviet economic sector, and the Act was amended, over Executive Branch opposition, to require denial of exports to Communist countries that would contribute significantly to their economic, as well as military, potential. Commerce's immediate response was to state publicly in its next regular report to Congress that it would apply the economic potential criterion only when comparable goods or technologies were not available abroad -- a criterion which effectively negated the Congressional intent since such items were obviously not controlled by any other countries and it was not possible to convince even COCOM allies to control them. Then, in 1969, with Administration concurrence, the economic potential criterion was physically removed from the Act. Consequently, I can only assume that the people who wrote the "History" section of the CBEMA statement never really studied the actual history of export controls.

The further contention that by 1968 the U.S. maintained unilateral export restrictions on approximately 1000 items that were freely available abroad, is a distortion of "facts" brought out in the Muskie-Mondale hearings of that year. The truth is this: In 1968 and for many years before, Commerce export controls identified commodities by reference to the Census Bureau's classification (Schedule B) of all goods known to mankind, a compilation widely used for statistical purposes, with which the business community was long familiar in their regular reporting of all their exports to Census for its foreign trade statistical publications. Census had long classified certain commodities in what it called "basket categories", for example, by first listing separately the different kinds of articles in a certain category, and then, at the end of that list, having an entry reading, "and all other articles in the above category, not elsewhere specified". This last was called a "basket" category, for it was a catch-all which simply made sure that no article then or afterword created would not be covered for statistical reporting purposes by failure to identify it specifically in the Census listing.

Export control personnel allowed some of these basket categories to be kept on the list of items requiring a validated export license, as a precaution against something new and of strategic nature possibly slipping through the control net. In doing this, they realized there could also be over coverage, but reasoned that few exports took place in basket categories, and if anything non-strategic in the category should be exported often enough to make licensing procedures a burden to business, such item could, when identified, be expressly excluded from the export control list.

It was in this really trivial manner that "approximately 1000 items" were pinpointed as being on the control list, though no one could ever show any communist country interest in buying them, or even enough foreign trade in them to make the license requirement for the basket category containing those items any real burden to exporters.

The assertion that the 1969 Act "changed the focus of" U.S. export control policy, giving "greater weight to the economic benefits of U.S. exports", ignores the fact that Commerce, from the very beginning of its administration of export controls, always applied its traditional and primary interest in the promotion of exports to its administration of export controls. This is evidenced by numerous and repeated Congressional investigations of export controls, from 1948 on, almost all of which criticized Commerce for this conflict of interest. Indeed, it may well be that the export promotion language put into the 1969 Act by its Senate sponsors was intended to mark the victory of the East-West trade promotion-minded members of Congress and the business community over the trade control members of Congress, who had been considered to have reached their high point with the insertion of the "economic potential" criterion in the 1949 Act, in the early 60's. (As I recall, the "economic potential" criterion was a part of an extension measure which both the House and Senate conferees had tried to drop from the bill, but which, in one of those rare occasions in U.S. history, both the House and Senate members rejected the reports of their conferees, and forced the "economic potential" criterion to be included for final vote and approval.)

An important modification of export control administration brought about by the 1979 Act, but not mentioned by CBEMA, was the opportunity it gave businessmen to participate in technical and policy level evaluations and reviews of commodities and technologies, (even at COCOM), in terms of military importance and foreign availability and comparability. It would be interesting to know why businessmen and their trade associations are continuing to lambaste Commerce and Defense in generalities about continued inclusion of non-strategic items on the control list and continued coverage of foreign available items. Have the technical and policy review procedures failed to work? Specific examples should be brought to Congress! Lacking such specifications, I can only assume that businessmen find that technical and policy reviews of specific items raise more questions about the wisdom of decontrolling items they would like to have decontrolled than they care to address, and that they have concluded that Congress has proven to be a more sympathetic listener to their complaints -- one that will accept the businessman's generalized word, without demanding proof. (It's the old adage: "Ask for twice what you expect; get half of what you asked for; and you wind up way ahead of where you were before you asked.")

It is important to note the concession here that (1) unfriendly countries do attempt to get our technology for military use; (2) that they try to do so through legal and illegal means, and (3) that western high technology does play a role in Soviet military buildup. It is also significant to find stated here twice -- once at the top, and again at the bottom of CBEMA's page 6 -- that there is no agreement on whether dual-use commercial exports can have military applications, and no agreement on "the degree or significance of" U.S. western technology contributions to the Soviet military capabilities. Of course, there is no agreement on these two related critical issues! Could a businessman ever concede that the export of his product -- be it miniature ball-bearing grinders, or anything else -- made a significant contribution to Soviet military potential? (Will tobacco manufacturers ever concede that their products really are injurious to health?) Don't ever expect such concessions!

But, if Congress is to regard the lack of agreement on the significance of admitted contributions which U.S. strategic commodities and technology have made and will continue to make, as reason to curtail and weaken export controls still further, then Congress will be falling prey to the business community's natural and insatiable pressure for markets at any cost.

The CBEMA linkage of this lack of agreement on the significance of U.S. contributions to the Soviet military potential, directly to "the need to improve U.S. export performance", proves that my preceding comment on the business community in the preceding paragraph of these comments is not undeserved. Consider their citation of statistics on our huge merchandise trade deficit.[1] How much do they really believe even unlimited sales of computers and electronic business machines to the USSR would improve our trade balance? Probably not very much, overall; but every sale is good -- for the company making it!

I agree on the importance of industry-government cooperation, and urge that Congress inquire into how it is working in the areas of the technical and policy level review panels at Commerce.

And, from the vantage point of my 13 years in charge of the legal side of export control enforcement -- from 1948-1961 -- I agree that businessmen can be an important source of information about violations, in three different ways: (1) by firm A furnishing a tip or lead in confidence, about the wrongdoings of competitor B;

(2) by responding to questions from export control or Customs investigators, though not volunteering information in the first instance; and (3) by reporting or admitting violations committed, by a firm's own lower level personnel, either before or at an early stage of an official inquiry in the hope of limiting liability to such personnel and exculpating the company. None of these co-operative practices can ever be a real substitute for a well-administered export licensing system, and indeed, they exist largely just because the licensing system and its enforcement makes it desirable or advantageous for business firms to provide such help to such enforcement. Despite implications of the CBEMA statement on this point, I doubt that many U.S. firms would want to be known in the U.S. or abroad as auxiliaries of U.S. export control enforcement, or to be suspected to be such by foreign firms with whom they deal.

The CBEMA suggestion that technology advances in the commercial computer field depend on business freedom to export such technology to free world licensees and affiliates, presumably without restraints on the ability of a foreign recipient to ship its products of that U.S. origin data to Communist countries, raises several questions. Consider the real (not hypothetical) case of an advanced computer designed by a U.S. firm to capture lucrative U.S. Department of Defense business. The business is won, and the company is thus fully aware of its machine's strategic importance and value. Now the firm sees that it has on hand the technology to manufacture equipment, etc., to make this very profitable computer but useless unless another market can be won. Why not sell more then to other countries? Why not license a foreign firm to make it abroad? Why not sell some to even the USSR, if a peaceful end use, like the processing of weather information, can be envisioned? All these questions have profitable results, if answered affirmatively. Then the pressures mount to license the computer, and the Department of Defense initial impetus for development fades from the memory of the company.

Or, take the instance of the U.S. origin strategic integrated circuit technology freely exported by a U.S. firm to its French licensee. When DeGaulle wanted to induce the USSR to acquire the French SECAM color TV technology and production equipment, he offered that IC technology to the USSR as part of the package. At first, the U.S. objected, but when DeGaulle stood firm, Kissinger, for the National Security Council, decided to withdraw U.S. objections, saying, like the fox about the grapes: "The IC making technology wasn't very important militarily, anyway!"

The claim that export controls could be administered and enforced better if fewer commodities were controlled, ignores the many already removed and the high strategic nature of those retained. It is reminiscent of the farmer who sought to get his horse to eat less fodder. He succeeded, but the horse died.

The GAO comments that "almost half" of 60,783 license applications Commerce reviewed in 1981 could have been decontrolled "because the products involved are not considered militarly significant." The phrase "are not considered" is the operative term. Who doesn't consider them significant? Commerce? Defense? Or, is it the business community? These questions need answer before any concern is taken by Congress of this charge.

The CBEMA charge that Commerce fails to apply adequately the foreign availability test of the 79 Act, glosses over the really perplexing problems, by failing to mention alongside "availability" the added statutory requirement of "comparability". I have commented on the difficulties involved in defining and applying these two criteria, in my comments on the Frischkorn statement for EIA (re pp. 9-10 of his statement). The CBEMA statement implies that"comparability" means "substitutability". But, as I point out in my above-cited comments, hardly any modern industrial or scientific product does not have a substitute of one sort or another. The most sophisticated machine tool only does better or faster what an old, widely available, much less sophisticated model can do, maybe not as fast, but fast enough if one can't get the best, most modern, electronically controlled model. Does this constitute "comparability" under the statute?

It would be interesting to receive reports from business firms of specific examples of products and technology controlled by Commerce as militarily important, with proof of foreign products and technology available and comparable to the U.S. items. Let's see whether Commerce is being arbitrary and capricious, or has good reason to consider that the available foreign item is not comparable to the U.S item in a meaningful way. Along this line, consider the weak proof of comparability and availability offered by Bryant in the miniature ball bearing grinders case, which was accepted by Commerce, to the detriment of U.S. national security?

The related CBEMA argument, that the export control administrator should be obliged to prove that every item proposed for control -- or even already controlled -- is not available abroad, runs counter to all legal reasoning as to the proper placing of the burden of proof. A party is generally not obliged to prove a negative, certainly when to do so would require that party to comb the world for proof, and when the affirmative, if it exists, is pecularily within the knowledge of the other party. If there is foreign availability and comparability, it would be within the special knowledge of the American producer, for every business knows its competitors and knows whether its product is better or worse than those made by the competitors. Therefore, the fair and sensible thing for Congress is to let the export control administrator do the job of proving the commodities to be controlled are strategic, militarily critical, or of some such importance. Then, oblige the U.S. producer wishing to have the commodity deleted on ground of foreign availability to bring forth proof of such availability and comparability, for investigation and review by the export control administrator. This latter may be difficult for the export administrator, to verify the U.S. firm's allegations, because foreign competitors may not be willing to cooperate in developing proof of the points of U.S. vs. foreign superiority, inferiority, substitutability, etc. Also, it may be difficult to find unbiased qualified persons to make the needed comparison, especially in the high technology fields. But Congress should not force the export control administrator to accept a U.S. firm's charges of foreign availability, when it is not clear, specific and reliable, just because the export control administrator has been unable in a given time to get good evidence about the foreign product, one way or the other. Congress should, in the interest of U.S. security, recognize that when the proof for exemption from control is not clear and convincing, it is safer to keep the item under control, than to yield to business pressure for exemption in the interest of our commercial gain!

My own impression of COCOM is that, if it were not for the prodding of the U.S., the multilateral control system would have long ago disappeared. This is largely because the COCOM countries having significant foreign trade interests vis-a-vis the Communist world have been generally represented in COCOM by their business-oriented, foreign commerce/foreign affairs officials, with their security-oriented military officials seldom allowed to participate in control list reviews, or in the consideration of "exception" cases.

I am not familiar with DOD's efforts to devise a list of strategic technologies, but urge that DOD be given an opportunity to respond to CBEMA's charge of swamping business with paperwork.

I agree that implementation of export controls can and should be improved, and am satisfied that our strategic technology has gone, and can continue to go, to unfriendly countries in other ways than through commercial exports. This works both ways. Compare what we lost through the North Korean capture of the Pueblo, with what we have gained (or could gain) from the Israeli capture of Soviet arms and implements of war from the PLO and Syrian stores in Lebanon. In this regard, the suggestion that militarily critical goods and technologies are "available" to unfriendly countries via Brazil and Argentina, may or may not have validity; but it is certainly loose thinking to include Israel among the countries where our technology is at risk to the USSR.

As a general proposition, voluntary compliance with U.S. export controls by responsible companies is highly desirable. But to expect that to be achieved by identifying and singling out "responsible" companies for "honor system" treatment by the export control administrator may be too much for any private business firm to bear -- most don't want to be government agents!

The suggestion that there is a link between the ability of U.S. high technology companies to be strong and clever enough to create new militarily important technologies for DOD, and their ability to make profits from exports of their technologies to firms in free world countries under licensing agreements, affiliate arrangements, etc., may have some merit. However, it is an argument that must have considerable limits, otherwise it can lead to the kind of results experienced in World War I, when munitions makers in France demanded freedom to sell to Germany in order as they said, to have capital to devote to developing new weapons for France.

The idea of limiting enforcement to a limited group of truly critical items has been recommended by the business community since almost the beginning of security export controls in 1948 (Cold War). Each cut in the control list from the end of the Korean War onward was welcomed by businessmen at the time. From then till now the control list has been periodically shrinking, but almost never expanding (except for new commodities and technologies). Each time the cut was preceded by the same business claim - that controls would be enforced better, if the list were shorter. This is a never-ending process of encouraging decontrol -- a traditional "salami" tactic.

The proposal for a general license for exports to COCOM countries and for reexports to other countries, COCOM or not, has been considered in my comments on Frischkorn's statement, pp. 4-6.

The proposal that any imposition of unilateral national security export controls be preceded by public notice and opportunity for public comments etc., is precisely the counterpart to the proposal regarding foreign policy controls set forth at p. 13 of Frischkorn's statement. I dealt with that aspect in my comments on Frischkorn's statement, and they apply even more strongly here. It could be disastrous to national security interests to require advance notice of a proposal to control a new commodity or technology of military importance, leading firms to race with their exports, to beat or even frustrate the proposed control. Unilateral control is generally needed before COCOM control can be negotiated, yet advance notice, etc., could even render such COCOM negotiations more uncertain of a positive result, because it would lead other COCOM countries to consider one request for addition of the item to the COCOM list to be half-hearted.

The proposal for a comprehensive operations license raises an number of very serious problems.

1) It would substantially ease export control burdens for U.S. firms having overseas subsidiaries, licenses, etc., giving them substantial economic advantages, to the disadvantage of their U.S. competitors who do not have such overseas channels for foreign manufacture of products of the "militarily critical technologies, keystone equipment, and keystone materials" involved in the proposed comprehensive export and reexport license. That would then stimulate such competitors to develop their own overseas connections, to provide the basis for them to get comparable economic advantages from this special export license. We have a good many reasons in these times not to feel as euphoric as we used to about continued movement of U.S. production overseas, with consequent loss of more U.S. worker jobs. Do we want to extend that condition into the especially sensitive area of foreign production of unilaterally critical products of U.S. technology?

2) By hypothesis, this trade association's proposed comprehensive license would produce high technology electronic equipment

based on militarily critical technologies. Such equipment could therefore be right next door to military equipment of the kind which is subject to State Department Munitions Control Licenses. Would we like to have such equipment produced abroad under open end license of the kind proposed here? Does State issue similar blanket export and reexport licenses for overseas production of U.S. military equipment? Once such items would be produced abroad, what assurance could Congress have that the same important equipment would continue to be produced in the U.S.? If not, could Congress safely permit the U.S. to be dependent for its own needs on foreign production of items made from such militarily critical technology?

(3) The "safety net" of the proposed comprehensive license would be "a network of long term, well-defined relationships, including subsidiaries, licenses, suppliers, etc., which would be located in any country (COCOM or non-COCOM), except the Communist countries of Europe and Asia." Reexports from one country to another of "all militarily critical items," could go on indefinitely. The assurance factor for U.S. export control purposes would only be "the demonstrated ability of the exporter to control militarily critical technologies." How demonstrated or demonstrable is not clear!

Would permitted reexports cover only the products of the militarily critical technology, or also the technology itself? This is not clear from the statement. Obviously, the security risk would be enormous if the technology itself could be freely reexported from one foreign country to another!

Assuming that the intent is to permit reexport only of foreign made products of the U.S. technology, the risks are still untenable, considering what those products are likely to be and the wide range of non-Communist countries to which they might be freely shipped and reshipped, many of which have no export controls whatever, and some of which have closer ties with the USSR than with the U.S.

Is it any assurance for U.S. security that the U.S. exporter has demonstrated ability to control militarily critical technologies? What about the ability or interest if its foreign customers in regard to the protection of the strategic products of that technology? Will the U.S. exporter of the technology be willing to be an insurer of the safe deposition and use of the products? What about the foreign recipients of the technology, be they subsidiaries, licensees, affiliates, etc., of the U.S. firm -- will they contract to refuse to sell and ship their products of the technology to the USSR, even if their government orders them to do so? Will the U.S. firm accept responsibility to the U.S., including penalties, if the foreign recipient of the technology divulges it to the USSR or sells products of the technology to that country? Or, will the U.S. firm simply "volunteer" disclosure of the consignee's violations to us and -- under another of its proposals in this statement -- seek exoneration from the U.S. because it told before it was found out?

The CBEMA rests its demand for this new comprehensive license on its fear that the U.S. is "determined to impose new controls on the export of militarily critical technology". It asserts that new government controls "must recognize existing commercial safeguards governing the treatment of such technology, if they are to be effective." It claims that no firm using advanced technology can stay in business for long without a sophisticated system of internal control on its technical know-how. The fallacy of this argument is that business controls rest on contracts, and business contracts rest on the premise that the parties will either perform or pay damages. The possibilty of decree of specific performance or of an injunction against unauthorized transfer of the technology or products, is nil, where the parties are in different countries. A sophisticated business system of controlling internally the U.S. technology is fine for providing a foundation for a claim for damages, or even for threatening a firm with termination of the continued flow of other U.S. technology. But if the price is right, the foreign firm may conclude that damages are a small cost to bear and that the bulk of the U.S. technology having already been received, it really has nothing to fear from the U.S. firm's threat.

I don't suggest that all these legal devices are not useful -- from the commercial standpoint. But, I do say that they are no protection whatever for the U.S. government! There is no real substitute for case-by-case licensing of the technology, subject to controls to be imposed by the U.S., not first by the business firm, on the foreign consignee's reexport of the technology and for its export of the foreign made product. U.S. firms will, I feel sure, continue to maintain and improve their own internal controls, for business reasons, even if Congress decided that the U.S. should not issue these comprehensive licenses, because they are, as I have shown, an unmitigated danger to U.S. national security.

CBEMA's proposal that notice and opportunity for comments precede any imposition of validated license control over any goods or technology, goes beyond the proposal of this nature in Frischkorn's statement for EIA. Frischkorn would apply that requirement when the control is sought to be imposed for foreign policy reasons. In my comments on Frischkorn's proposal (at p. 13 of his statement) I expressed concern that it might be extended even to national security controls. That concern was well-founded, as appears from CBEMA's proposal. The idea of requiring advance notice, and opportunity for hearing, etc., before a new commodity or technology could be subject to validated license control is very dangerous for the national security, foreign policy, and even short supply interests of the U.S. It would give U.S. firms a signal to ship out the commodity or technology in unlimited amounts while spinning out time in hearings to force the administrator to justify the control. Technology, once gone, can never be retrieved. Quantities of the commodity might go under general license in large enough amounts to damage U.S. national security interests.

Our foreign policy interests also at times may require swift, sudden imposition of controls on a list of goods and technologies hitherto exportable under general license to a particular country. To hold up the Executive in carrying out effective foreign policy measures, by forcing advance notice and protracted hearings, would be detrimental to our country's influence in world affairs. As to short supply situations, it is obvious here too that requiring advance notice and hearings would be harmful, by giving exporters advance opportunity to drain our domestic supply by hurried foreign sales and exports.

All this is not to say that it would be wrong to require quarterly reports to Congress on measures taken to improve the U.S. government's capability to assess foreign availability and comparability. However, I believe that such a proposal is a redundance, and that the 1979 Act already contains reporting requirements extensive enough to embrace this subject.

The proposal for review of all export control actions and proposed actions by the Court of International Trade is calculated to turn export control personnel into a replica of the well-known Greek statue of the Laocoon Group -- the three strong men being squeezed to death by intertwining serpents. The agency could be suffocated by numerous, protracted appeals, with no penalty whatever against business firms and trade associations for prosecuting even the most frivolous appeals, and every incentive for them to do so, since presumably the agency would be impotent to act until the appeal was resolved. Business firms and their trade associations already have ample, appropriate review mechanisms, both within the Department up to the Secretary and his Appeals Board, and in the Federal courts under the 1979 Act and general principles of Federal Court review of administrative agency actions. In addition, firms can always complain to Congress, as they have been doing since the beginning of export controls!

The requirement that Commerce review each category of goods and technology on the control list annually, for military importance in regard to "specific adversary countries" and to publish its determinations on that subject would be very detrimental to national security in terms of a) identification of the potential enemies, and b) disclosure of what is deemed to be the rating of the military importance of a particular item to those named enemies.

I don't know the Harmonized Commodity Description and Coding System, and so cannot comment on the proposal that it be used by COCOM and the U.S. for control list nomencloture. However, I doubt that all COCOM countries would ever agree on a single list.

The proposal to require the export control administrator to mitigate penalties for unintentional violations and for voluntary disclosure of violations was also made by Frischkorn in his statement,

(p. 16 and 19). I commented on that proposal, as applied to the anti-boycott provisions of the Act, at p. 16 of Frischkorn. My comments are also applicable to the broader proposal of Frischkorn, (p. 19) and also here (CBEMA p. 25), as proposed to be extended to all kinds of violations of the 1979 Act.

CBEMA proposes that the anticipated new DOD-inspired, validated license requirements for export of militarily-critical technology, should not be allowed to interfere with a U.S. firm's existing contractual obligations to export technical data if they complied with U.S. export controls in effect before the new requirements were imposed. I can see merit in this, as applied to data already exported to a free world subsidiary or licensee, and foreign made products thereof. But I question the wisdom of such an exemption as applied to prior contractual obligations on the U.S. firm to continue to export new technology developments after the new data control requirements are imposed. Such new technology developments may be so significant as to change a previously non-strategic product into a militarily-critical product -- a real possibility in the electronics technology field. New, significant technology, even if of an improvement nature, should be subject to scrutiny by the U.S. export control officials, to be sure it does not change a previous low-risk situation into a high-risk one.

FOOTNOTES

[1] A trade deficit rendered large, not because our exports are small or diminishing so much as because of the heavy increases of imports, e.g., oil, autos, and electronic equipment produced more cheaply abroad, often to the order of American companies.

Theodore Thau-Comments on Semiconductor Industry Association Statement of March 2, 1983

This statement by J.A. De Rose of I.B.M. deals exclusively with the Comprehensive Operations License. I have compared it with the proposal of the same nature contained in the Computer and Business Equipment Manufacturers Association statement. My comments on page 20-22 and 27-29 of the CBEMA statement are fully applicable here and will not be repeated.

Theodore Thau - Comments on Statement of
Gerald Gleason, for Scientific Apparatus
Makers Association (SAMA) - March 1983

The SAMA statement makes essentially the same points I have already covered in my comments on the EIA (Frischkorn) and CBEMA statements.

Here I will give merely such added thoughts as have occurred to me since my earlier comments were written.

The assertion that the U.S. is one of the few governments in the world that imposes export controls for foreign policy reasons challenges a basic premise of U.S. foreign policy which is a basic premise of other countries also, except as and when business interests control the foreign policy of a country.

In 1967, I was a U.S. government representative at the first Moscow Trade Fair in which the U.S. government had a pavilion at which U.S. firms displayed goods available for sale. The fair exhibited equipment of 35 countries for use in food packing and packaging. The Secretary of Commerce, who had sent me to the fair, asked me to attempt to speak to a high official of the Soviet foreign trade ministry, giving him our Secretary's informal message, urging the improvement of trade relations between our countries. Through our embassy, I was able to meet with the Deputy Minister of Soviet Foreign Trade who, as soon as he heard my statement, responded with a 10 minute tirade against U.S. involvement in the Vietnam War. He said that the USSR would not buy any U.S. goods as long as the U.S was bombing Hanoi. He added that even apart from the Vietnam situation, the USSR would only buy U.S. goods if it could not get comparable goods from Western Europe and Japan. The USSR he said, preferred dealing with Western Europe and Japan because it had bilateral trade agreements with those countries which led them to buy goods from the USSR in amounts relatively equivalent to the Soviet Union's purchases from them.

This authoritative statement by the Soviet deputy minister of foreign trade is, I feel sure, still reflective of Soviet trade policy today. First, they have no hesitancy in using trade as an instrument of their foreign policy, wherever and whenever it suits them. Second, their counterparts to our businessmen are government officials operating out of their foreign trade ministry. Third, because of their bilateral trade agreement practices, their foreign trade ministry equivalents to our businessmen are not likely to be pressing their government to allow them to buy a U.S. high technology or other product when a comparable one is available from England, France, West Germany, etc.

A major difficulty with the foreign availability and comparability argument advanced by U.S. businessmen is that the U.S. government is not able to hear their explanations to prospective foreign buyers as to why their U.S. product is superior to the claimed foreign equivalent.

Another is that for some purposes a qualitatively inferior foreign product may be "good enough", if the price is sufficiently less than the American superior product. Should that price difference be factored into the comparability criterion? If so, how should the U.S. deal with the kind of problem I learned of at a Ditchley conference, in England, in 1968. I asked a British bank official why his country had recently given the USSR very long term credit on a chemical fertilizer plant project -- credit going far beyond the term agreed on by the Western countries not long before (Berne agreement). His reply was that the USSR representatives had said that if the British did not give such credit terms, the USSR would buy a plant from Belgium, which was willing to give such terms for its not-as- good plant. When I asked the banker, of this Soviet assertion with the Belgian government -- a NATO/COCOM ally -- he replied: "Of course not. If we had asked, they wouldn't have admitted it, and we wouldn't have believed their denial."

The stated willingness of SAMA to support statutory language which would remove the President's authority to impose any export controls for foreign policy reasons, is shocking to me. I had not believed businessmen would be willing to strip their government of power to use trade as an instrument of national policy -- particularly in a Republican administration dedicated to getting the government off the back of business. It simply reflects an insatiable desire to capture more and more foreign markets, ignoring utterly the inclination of many foreign countries and their businessmen to bilateralize their trade as much as possible through trade agreements, etc. with their natural, traditional trading partners in Western Europe -- and blaming the U.S. government for failures to sell which are much more attributable to such economic/political factors than to any U.S. government trade controls.

The proposal to eliminate validated licenses to COCOM countries, New Zealand, and Australia, as we have done with Canada, ignores the historic background of that special case and the problems that have plagued it recurrently over the years.

The original U.S. decision to exempt exports to Canada from validated license requirements goes back to World War II, and an informal understanding between President Roosevelt and Prime

Minister Mackenzie King. The practice has continued ever since, with Canada as a member of COCOM, carrying out the COCOM-agreed controls over goods on the COCOM list, being exported from Canada, whether of U.S. or Canadian origin. As to goods on the U.S. unilateral control list imported into Canada, the Canadian control over exports of those items was for many years based on (1) Canadian government requirements of a validated Canadian license to export those items, where admitted to be of U.S. origin, and (2) general ability of Canadian customs to detect such items when sought to be exported on a false representation they were of Canadian origin, because Canada did not manufacture many of them.

This system was accepted by Canada, as the alternative of a closely guarded border was certainly untenable and the normal trade pattern of Canadian purchases of U.S. products mainly for consumption, and not for re-export, made it appear that the burden on Canadian export licensing and customs personnel would not be large. Nevertheless, there were - and probably still are - serious loopholes in the Canadian system of policing U.S. export controls. I recall several instances over a considerable period, where U.S.-made gravity-meters, of strategic importance, but not on the COCOM list, slipped through Canadian customs on the basis (a) misrepresentation of Canadian origin in the Canadian export declarations; and (b) failure of Canadian customs to know that no gravity meters of any kind were made in Canada. Later, too, Canada proved to be a backdoor for illicit U.S. exports to Cuba.

I do not believe Canada ever followed the U.S. practice, instead requiring validated licenses to export Canadian goods to the U.S., except to the extent that COCOM procecures allowed

COCOM listed goods to move less formally from one COCOM country to another.

The Canadian precedent would probably not work with any other country, if only because we do not have the border-closing alternative to propose elsewhere. (Mexico is another special case, not a good precedent either for extension to the COCOM countries, Australia and New Zealand).

I have no knowledge of the microprocessor problem, but hope Congress will hear the government's explanation.

On the issue of foreign availability of comparable items, SAMA says that "COCOM competitors in process control computers can readily access the Soviet market by applying low performance parameter systems very comparable in character to our own." (Underscoring mine). I'm not sure whether this means that the foreign-made computers are at the low-end of the COCOM computer list, which only calls for control over the number of such machines exported over a period of time. Also, does SAMA mean that Commerce denies licenses to export the same low-level computers to the USSR? This is not clear.

The European ones may be bought in preference to ours, because they are cheaper, because the USSR prefers to buy from countries with which it has bilateral trade agreements, and only chooses to buy from the U.S. when ours are better than they can get in Europe or Japan.

I have commented fully on the inherent weaknesses of commercial controls over technology and why such controls cannot be a substitute for U.S. government controls.

There is a large difference between a distribution license to allow named commodities to be exported to an approved consignee, and one to allow technology to move under such a license. Commodities exported under such a license are of a finite quantity, useful to make a finite number of end products. They move under a license issued on the basis of written consignee assurances to the U.S. government as to what will be done with the U.S. commodities, and where they or their end products will be exported. In contrast, technology exported under the proposed comprehensive license would enable a consignee to make an infinite number of products, and the disposition of the technology and of products therefrom would be subject to consignee assurances to the U.S. exporter.

I have no comments on the criticism of Operation Exodus, which did not exist during my tenure. From my experience in enforcement of export controls from 1948 to 1961, I would ask whether the number of illicit exports of high technology electronic equipment made and attempted in recent years, and the techniques employed by their perpetrators, justified the complex procedures followed by Commerce and Customs, as described by SAMA.

Further, from my experience in working with Customs inspectors at the ports of exit and with the Customs investigators, I would recommend that Customs not replace the export control administrator in the enforcement field, but rather suggest that Customs work with export control licensing and enforcement personnel, exercising jurisdiction by delegation from the export control administrator. After all, Customs' primary duty is to police imports for revenue and other purposes, and while they have valuable expertise which is translatable to export control enforcement, there is always the risk that the Customs men in the field will find themselves obliged to spend their main time and effort on import cases. Export control enforcement people should remain in control of every export control investigation, and be able to jog Customs to give priority to, and spend more time and effort on, export control cases, when that course is appropriate. I say this, not in criticism of Customs (for whose people I always had high regard), but because of my sensitivity to the potential conflict of interest that could at times affect judgments about the priorities to be determined when Customs personnel have both import and export investigations on their dockets.

The proposal for U.S. business cooperation with the government in enforcing export controls, by educating businessmen about controls, etc., is very good. In the 13 years I was involved in export control enforcement, directors of the enforcement unit and I, as attorney in charge of the legal side of the enforcement program, conducted numerous trade seminars, addressed many exporter, freight forwarder, and carrier groups, and undertook a variety of other educational programs, designed to keep exporters and others involved in export facilitation informed of export control requirements and the varieties of violations that had been uncovered and prosecuted. It was our belief that such educational efforts, encouraged law abiding exporters and others associated with them to cooperate with the enforcement unit and prevented many violations from occurring through ignorance or carelessness. Such efforts had to overcome opposition within Commerce, at high levels, such as when I first proposed that a press release be issued for each export control violation prosecution decided by the Compliance Commissioner. Fear was expressed that releases of that nature would be regarded by the business community as inconsistent with their traditional relationships with the Commerce Department. Eventually, that battle was won by export control enforcement.

I urge a return now to such practices and others that may be suggested by business groups or export control enforcement officials. I say "return" because for a long time after I left the export control enforcement field, such educational activities did not occur, largely because of a gradual down-grading of enforcement and the acendancy of the view that talks or articles on an enforcement theme might suggest some hostility on the part of Commerce toward the business community and dampen the export promotional efforts of businessmen which Commerce officials were then encouraging.

The proposal for a prior disclosure program has been commented on by me, in my prior memoranda. I have earlier explained why the USSR does not buy U.S. equipment unless it is clearly superior to equipment available from European countries, etc., which have bilateral trade agreements, and roughly balanced trade whenever possible. That is why the USSR often buys a European item which is as good as (comparable to) an American item, even if the American item is offered at a lower price. It is such factors, and not claimed uncertainties about U.S. export control policies, that really cause the USSR to specify European-made equipment, and why their European construction and engineering aides do so.

I frankly, do not understand SAMA's criticism of the Reagan Administration's application of foreign policy export controls against Libya, considering that country's hOstility to the U.S.

and the USSR's use of that country as a pawn in its penetration of North Africa. SAMA's criticism is reminiscent to me of the attitude expressed by munitions-makers in the World War I period -- that they have only international loyalties, and should be free to conduct their business with all belligerents in any situation.

Theodore Thau - Comments on Statement of National Machine Tool Builders' Association (NMTBA), March 1983

My experiences with this trade association and certain of its members goes back to 1961, when I was just appointed to be Executive Secretary of the Export Control (Administration) Review Board and of the Advisory Committee on Export Policy, as well as Chairman of the Operating Committee.

As I recall, the association took a strong position in support of Bryant's efforts to obtain a validated license to ship its subminiature ball bearing grinders to the U.S.S.R., and for generally relaxing U.S. and multilateral (COCOM) controls over exports of sophisticated machine tools to the U.S.S.R. & Eastern Europe. The Senate Committee hearings on the grinders, and the House Select Committee hearings on the overall administration of export controls, contained vigorous statements of the association's position and strong debates between association spokesmen and key Senators and Representatives on the Committees.

A little later, the association and certain of its members fought hard for approval of various types of numerically controlled machine tools, such as Gleason's gear-cutting machines, for installation in the U.S.S.R.'s "Fiat" plant at Togliatti, carrying their pressures several times from Commerce & Defense, to the White House, as well as the Hill.

Then, still later, there were the similarly strong efforts of the association and some of its members to win approvals of licenses for the Soviet truck factory (the one whose truck production made possible the Soviet invasion of Afghanistan).

As I recall, the U.S. & free world machine tool industry was the first one I noticed, that used their technology cross-licensing arrangements as a device for maintaining well-nigh continuous pressures on COCOM countries and the U.S. to relax both the multilateral & U.S. export controls toward the U.S.S.R. & Eastern Europe.

Machine tool industry experts also provided technical assistance to those COCOM countries that had a machine tool industry in the periodic list reviews, pointing out Soviet & East European production of machine tools, even if only one of a kind (prototype), and urging such efforts (even when obtained by copying of U.S. or West European machine tools), as grounds for relaxation or removal of COCOM controls over various types of tools.

Then, as I recall, there would be occasions, seemingly of an orchestrated nature, where a machine tool producer in a COCOM country (other than the U.S.) would start the movement for relaxation by urging its country's COCOM representatives to seek approval of a license to export a type of machine tool to an East European country, like Poland or Czechoslovakia, toward which more friendly attitudes prevailed in the U.S. & COCOM. The claim would be made that the particular COCOM country's machine tool industry was languishing and that this order was needed to keep it alive. As the argument that economic strength is essential to national security, the COCOM country would seek COCOM approval as an "exception" to the then embargo status for that type of tool. The U.S. representative would concur, without knowing or without considering the possible relevancy of the inter-company relationships between the European producer of the tool proposed for export & a U.S. producer of similar tools, generally based on cross-licensing of technology arrangements. The next step would be either (a) a drive in COCOM to remove the particular tool from the list on the ground that the prior export to Poland or Czechoslovakia resulted (inadvertently, of course) in making available to Soviet engineers the embodied technology, and enabling them to copy it through reverse-engineering; or (b) a drive in the U.S. by the U.S. counterpart of the European tool producer to persuade the Commerce Department to allow the U.S. firm to have an export license too, to enable it to stay competitive with the Western firm that got the first order, again without apparent realization of the technology and other links between U.S. and European producers. Both techniques worked, over & over, raising the question in my mind whether everything was a matter of coincidence or design. Perhaps a clue to the answer can be found in the assertion on p. 8 of the NMTBA statement, that: "For the U.S. machine tool industry, the vigorous expansion of export markets has always been a primary objective."

It would be very salutory to require the NMTBA to provide detailed information on the overseas licensing arrangements between U.S. and overseas subsidiaries, licensees, and other affiliates. Only then can Congress learn just how this industry operates to get around U.S. export controls, & has done so for many years.

I presume the State Department will have questions about the wisdom of retaliating against COCOM countries (and companies in such countries) which "patently and persistently disregard COCOM regulations". But, as long as use of such retaliatory power to curb imports into the U.S. by such countries and companies is left to the President's discretion, there would not be much objection to the proposal.

Requiring the administrator of U.S. export controls to limit the control list still further, to cover only those items that "would make a direct and significant contribution to" the military potential of a hostile country, would bring export controls very close to covering only the munitions list already controlled by State! The essence of the distinction between controls administered by State and those administered by Commerce has always turned on the difference between direct and indirect contributions. It has always been realized that "direct contributions" would not cover enough for our national security needs. To change the 1979 Act now to restrict coverage to direct contributions to Soviet military potential would, for example, free the machine tools used in the Soviet truck factory!

This is not a mere technicality that NMTBA is proposing. The "significant" criterion is much less important, because no one would argue for control over "insignificant" contributions. But in the distinction between direct and indirect lies almost the whole area of control outside the tools used to make arms, ammunition & implements of war. Even most of the highly sophisticated computers are in the "indirect contribution" area, and would be freed for unlimited export by the U.S. & all the COCOM countries, if NMTBA has its way. I urge Congress not to accept this proposal.

The NMTBA objection to changing the statutory language from "would" make, to "could" make, a significant contribution to enemy military potential is not well-founded. When one is dealing with one-purpose products, & that purpose is to contribute significantly to an enemy's military potential, one is dealing with products of a munitions list nature or right next door to such items. The export controls we have long deemed essential, in addition to those directly concerned with making arms, ammunition & implements of war, are the controls over dual-use products, possibly civilian, possibly military, & often determinable only by knowledge of the likely intended end-use, as learned from intelligence sources confirming or refuting the representations given by the consignee country & its company. "Could" is a much more realistic term than "would" for dealing with such products and their intended end uses in particular cases. "Could" is somewhat broader than "would", to take care of needed case-by-case analysis. It is much safer to err slightly on the side of over coverage in this regard, than on the side of under coverage. The rather flip suggestion that a war cannot be fought without paper cups, is not only untrue, but it is also a mask for the intention to free-up more of the kinds of dual-use machine tools that went into the Soviet truck factory.

I have elsewhere dealt with the unsound proposal to remove exports of strategic products to COCOM countries, & with the related risky proposal to free exports of foreign-made products of U.S.-origin technology. Considering the pattern of widespread technology licensing by U.S. machine tool builders, this proposal would have two consequences, as I suggested at the outset of these comments: first freeing the foreign made products of the U.S. technology, and then providing justification for the U.S. firms to press the U.S. export control administrator to remove controls over U.S. made counterparts of such technology. I urge Congress not to start down that garden path.

The proposal to eliminate U.S. controls where there is a history of repeated license approvals is unsound and dangerous, for reasons I have given in earlier comments. Validated licensing, even in such situations, is to be considered an essential enforcement weapon, which would be completely lost under a general license system.

The Comprehensive Operations License for intercorporate technology transfers should not be approved by Congress, for reasons I have already given in considerable detail in comments on other statements.

The principle of continuous updating of the control lists, through the work of industry-government technical review groups, is a desirable one. How it works in practice, I do not know. I cannot therefore comment on the indexing proposal, for the U.S. or COCOM.

The entire page 24 of the NMTBA statement deals with the concept of "foreign availability" without once mentioning the necessarily interrelated and conditioning concept of "comparability". That mission is not an accident. It is easy to look at a catalog, or to read the affidavit of a U.S. business executive "attesting to equipment they have seen installed" in the Communist countries. But will the catalog give enough factual information to enable one to say that the foreign machine and the U.S. machine are comparable? Will the affidavit do so? Has the executive even seen the foreign machine operating? Has he examined the product of that machine tool to see if it is of the same high tolerance and precision as the U.S. machine he desires to have freed for export?

I have elsewhere gone into the serious problems involved in determining comparability, which are really the determinants of whether there is or is not real (or superficial) availability. I will not repeat all my arguments here. But I urge Congress not to succomb to industry pressures to put the burden of proving non-comparability, and therefore non-availability, on the government. Business has the best means of proving the affirmative on this issue. It is wrong to force the government of bear the burden of proving the negative, especially as the proof lies in foreign countries!

I presume State has commented on the proposal in the Heinz bill, supported by NMTBA, that the President be required to "determine", rather than "consider" certain factors, before imposing export controls for foreign policy purposes. I have no comment.

I concur, in principle, on the related proposal that import controls be imposed when export controls are imposed for foreign policy reasons, except, of course, where the import is critical to U.S. needs.

I oppose the Heinz proposal that foreign policy controls be imposed only prospectively, if such imposition must be preceded by advance notice and opportunity for public comments, Congressional hearings, etc. Such advance signals could frustrate the whole purpose of the intended control by giving the trade notice and opportunity to export, and to contract to export, large quantities to the country in question before the control took effect. A control of this nature must be imposed without prior notice, if it is to achieve its purpose.

As to the proposal for insurance - presumably by the U.S. government--against commercial risks from/loss resulting from imposition of foreign policy export controls, I suggest that Congress call commercial insurers to testify on the claimed lack of such insurance in the private market before considering such a proposal. I cannot believe that force majeur and restraint of princes conditions have so far vanished from world markets that insurance against such risks is no longer available.

The proposal that foreign policy controls be inapplicable to foreign subsidiaries and licensees of U.S. firms is a blunt suggestion for robbing such controls of their main effectiveness. Many U.S. industries today, like the electronics, computer, and machine tool industries have licensed away to overseas subsidiaries and licensees much of their production and assemby technology. Some firms rarely actually ship from the U.S. into the Common Market area anymore.

The proposal that foreign policy controls be limited by the same foreign availability test as national security controls, is still another device to debilitate meaningful control operations. Here, again, the NMTBA has used only the term "availability", obscuring entirely the much more important and difficult to establish concept of "comparability".

Finally, the proposal that industry advisory committees be consulted before foreign policy controls are imposed is seriously harmful to U.S. interests for the reason given above - it would result in tipping off industry personnel to planned foreign policy export controls, leading them to make speedy large exports to the target country and to make contracts for such exports in advance of the formal effectiveness of the control.

The problems created for export control enforcement by requiring that so-called "inadvertent violations" be excused, have been considered in comments submitted by me to other industry association statements.

The proposal that license denials be accompanied by sufficient information on which to base an appeal is ambiguous. Does it refer to license denial orders issued for violations, after notice and hearing? Such cases were based on extensive records in the years I was involved in enforcement, ample for any administrative or court appeal. If the proposal refers, however, to the more or less routine administrative denial of license applications because the commodity is deemed likely to be used for military proposals, or to be transhipped to a hostile country, or is the kind of product that is required to be denied to the named destination because of U.S. national security or foreign policy considerations, it is not always possible to provide the evidence to the applicant in a form that can be made public for court appeal purposes because it may come from U.S. or other intelligence services which would be compromised by the disclosure.

Theodore Thau-Comments on Statement for American
Electronics Association March 1983

I have commented on the points made in the AEA statement in my comments on Frischkorn's and CBEMA's statements.

I will reemphasize here:

(1) The AEA claim that more time and effort should be spent on enforcement, rather than on export licensing requirements, ignores the essential reason for licensing. It is the proven best measure for enforcing export controls. Licensing helps to prevent ignorant, innocent and careless violations, and there will always be far more of them than of willful violations. Yet from the national security standpoint, as much if not more harm can be the result of the inadvertent violation as of the intentional one. (To be sure, the inadvertent violator can more easily ask for pardon of his offense, no matter how great the harm he caused, especially if he voluntarily discloses his violation, after the event, but before the policeman reaches his door.)

(2) The importance of requiring these business groups to show Congress specifics in regard to the Government's failure to go forward with efforts required by the 1979 Act (and even the 1969 Act) to eliminate items from the control list which are proven to be available abroad in sufficient quality and quantity. Their generalized complaints should not be accepted, standing alone.

(3) The claim that DOD proposal to increase control over technical data exports would swamp business with unnecessary paper work, should be examined critically and in detail -- not accepted in its generalized statement form.

(4) Relying on commercial protections for technical data is very risky, as I have shown in my comments on the CBEMA statement regarding the Comprehensive Operations License.

(5) The proposal that Commerce should be required to accept the exporter's assertions of foreign availability, unless Commerce is able to present evidence to the contrary -- thus putting the burden of proof on the government -- is contrary to the common sense basis of the general legal rules on burden of proof.

To require one side to prove a negative, when the other side has available to it means of proving the affirmative, if it exists, is considered to be bad law and contrary to common sense, because it would require the party having to prove the negative to search the world for such proof, or to exhaust all sources of possible evidence on the affirmative.

To require the government to accept mere "assertions" by the exporter as to foreign availability, comparability, etc., would ignore the obvious trade bias of the exporter. The same exporter who would easily amass a dozen proofs to his customer as to the superiority of his product over that of his foreign competitor, would willingly tell the U.S. government that all those proofs were mere "sales puffing", if by claiming equivalency or superiority for the foreign product the exporter could gain exemptions from U.S. export licensing restrictions.

The only rational and proper basis for review of a foreign availability and comparability claim is to require the exporter to advance any proofs he has, and then give Commerce and Defense the duty to review it, subject it to independent investigation to the extent possible, and not to grant it unless a preponderance of the reliable evidence is found by Commerce and Defense to support the claim.

The opposition of AEA to the Garn bill to establish a separate, independent agency to administer export controls, confesses a preference for what business recognizes to be the over balance of Commerce in favor of trade promotion.

Theodore L. Thau
336 Amherst Drive
Salinas, Ca. 93901

Mar. 22, 1983

Senator Jake Garn
Chairman, Senate Committee on Banking, etc.
Washington, D.C.

Dear Senator Garn:

As Mr. Abernathy of your Committee staff has doubtless told you, I have completed my volunteer assignment of commenting on the six industry association statements you sent me. In that way I have also commented on the main provisions of the Heinz and Nunn bills which you also let me have.

To finish, I would like to underscore my concern about certain features of those bills:

1. It would be very detrimental to national security and foreign policy export controls to put the burden of proving *non*-availability of controlled goods and technology from foreign sources upon the export control administrator, to the extent of requiring him to accept the representations of applicants, unless he can contradict them by reliable evidence. (The present law requires a determination that foreign availability *exists* to be supported by reliable evidence, and says that uncorroborated representations by applicants shall *not* be deemed sufficient evidence of foreign availability.) The proposed change runs counter to common sense and customary business practices. Bearing in mind the Soviet/East European practice of buying within the framework of bilateral trade agreements with West European countries and Japan, and buying even high technology items from the U.S. only when clearly superior for achieving their intended end-uses, which--considering the kinds of products and technology the Act is concerned with--are likely to be of a strategic nature, it is manifest that U.S. companies must be prepared to prove to the satisfaction of well-trained Communist technicians that the U.S. item is superior to any foreign item in particulars directly related to the proposed end-use. For such applicants then to come to the U.S. export control administrator with uncorroborated representations that the U.S. product is no better than, or inferior to, the asserted foreign counterpart or equivalent, is to force the U.S. to accept such assertions as facts and be obliged to dismiss the likely representations to the Soviet/East European buyer as mere "puffing." In these lines of business, with these kind of customers, there is obviously no room for puffing! The real world is much different from that imagined by this proposed amendment, which is a part of the Heinz bill I urge you to oppose.

2. The proposal of both the Heinz and Nunn bills, to transfer export control enforcement to Customs, runs the risk of creating a conflict of interest within Customs, comparable to the conflict of interest within Commerce which your transfer bill properly addresses. In the case of customs, there is a traditional concern and interest relative to the policing of imports and the collection of revenue, etc. With respect to exports, however, Customs has since 1948 worked much more successfully on the inspection of documents and examination of cargos--where it has functioned in more or less close cooperation with Commerce export licensing and enforcement personnel--than it has in the investigation of violations. That is because the Customs investigators have always been requir-

ed to give priority of manpower and time to their import case dockets. I believe a better proposal would be to have Customs conduct investigations in cooperation with export control investigators, subject to the supervision and reporting requirements of the head of the export control investigations unit.

3. The proposal of the Heinz bill, that foreign policy controls should not apply to exports pursuant to a contract or other agreement entered into prior to the imposition of such controls, would, in conjunction with the existing requirement of the Act calling for the Secretary of Commerce to consult with industry before imposing such controls, be an open invitation to exporters to enter into long term contracts to export large quantities of goods likely to be affected by such controls on the basis of the advance tip-off given to them in the consultation process. There would be no penalty for beating the gun, and, indeed, there would be every incentive to do so.

* * * * * * * *

The fulsome manner in which the industry association statements laud Senator Heinz' bill, brings to my mind the story told by the late Luther Hodges, in his well-known book, "THe Business Conscience." Before being Secretary of Commerce, Hodges had been Governor of North Carolina, and before that, for many years, he had headed the Fieldcrest Textile Mills. During World War II he had served as chairman of the textile industry advisory committee for the OPA, the price control agency. The story he told was that a group of textile mill owners had come to him, complaining that the price controls allowed them insufficient return, and that they were all about to go broke. He believed them, and used his position to secure them a substantial price increase from OPA's administrator. After the war, he chanced to walk into a room where a number of the mill owners were together reminiscing. They did not observe him, but he heard one of the group loudly remind the group of the time they had "taken old Luther" for several millions by persuading him to believe in their sincerity.

*** *** *** ***

It has been an honor, and pleasure, to be allowed to assist you and your committee staff with my testimony and these comments. Should you have further need for my services, please let me know.

Sincerely,

Theodore Thau

SAMA 1101 16TH STREET, N.W. WASHINGTON, D.C. 20036 (202) 223-1360

March 18, 1983

The Honorable John Heinz
Chairman
Subcommittee on International
 Finance and Monetary Policy
Senate Banking Committee
5300 Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Chairman:

At the conclusion of the hearing on March 2, 1983 before the Subcommittee on International Finance and Monetary Policy on the renewal of the Export Administration Act, you asked each of the witnesses, including Gerry Gleason of the Foxboro Company who was representing SAMA, to provide for the record any specific instances where lengthy licensing delays have resulted in lost export business. The purpose of this letter is to provide SAMA's response to this request both for your information and for the hearing's record.

At the outset, I would note that as Mr. Gleason stated during his testimony, present U.S. licensing policy for instruments containing microprocessors causes SAMA members problems because export licenses are required for these commodities in the first place and, secondly, because of the fact that it takes four to six weeks to gain U.S. government approval for shipments to Western destinations and typically four months, at a minimum, for shipments to the East Bloc. Since foreign suppliers can ship competitive products to those manufactured by SAMA companies without any prior government approval, the question of licensing delays themselves become less important than the question of whether the products in question should be licensable at all.

In this regard, Mr. Gleason told the Subcommittee on March 2, 1983 that the Foxboro Company had lost an estimated $17 million in purchase orders to the Soviet Union in 1982 alone as a result of the unilateral U.S. policy that requires an export license for equipment containing microprocessors or microcomputers; a requirement that is not imposed on our foreign competitors. Mr. Gleason also cited a $3 million loss of business to Libya in 1982 for the same reason.

Several other SAMA members have reported similar experiences as the result of the U.S. policy to impose unilateral U.S. national security controls on exports of instruments containing embedded microprocessors or microprocessors. For example, a division of a large SAMA member present at your March 2, 1983 hearings tells me that during the first six months following the suspension of a licensing of exports to the Soviet Union, it lost well over $1 million worth of business in U.S. unilaterally controlled commodities to foreign competition. These commodities were controlled under CCL 4529B, not because the equipment itself is considered to be of strategic importance, but because it incorporates a microprocessor.

SCIENTIFIC APPARATUS MAKERS ASSOCIATION

Another SAMA member present during your March 2, 1983 hearings reports that his company lost an estimated $1 million dollars worth of business in the Soviet Union in 1982 and an additional $1 million in the East Bloc due to the imposition of U.S. unilateral export controls on instruments containing microprocessors or microcomputers.

A third SAMA company, not present during your hearings, provided the following information as to lost business due to unilateral U.S. national security and foreign policy export licensing requirements for items containing microprocessors or microcomputers, together with the source of foreign competition.

U.S. Classification of Products - CCL 4529B	Foreign Competitors	Country of Ultimate Consignee	Reason for Lost Sale
1. Plasma Emission Spectrophotometer	Jobin Yvon (France) Pye Unicam (U.K.) Hitachi (Japan)	Libya	Foreign Policy
Themal & Elemental Analyzer	Carlo Erba (Italy) Yamagimoto (Japan) Heraus (Germany)		
Ultraviolet/Visible Spectrophotometer	Kontron (Switzerland) Philips (Holland) Shimadzu (Japan)		
Flourescence Spectrometer	Kontron (Switzerland) Hitachi (Japan)		
Contract Value - $535,000			
2. OV/Visible Spectrophotometer	PYE Unicam (U.K.) Kontron (Switzerland)	Pakistan	National Security
Gas Chromatograph	Carlo Erba (Italy Shimadzu (Japan)		
Thermal & Elemental Analyzer	Mettler (Switzerland) Hereaus (Germany)		
Contract Value - $150,000			
3. AA Spectrophotometer	PYE Unicam (U.K.) Hitachi (Japan)	Iraq	National Security
Contract Value - $37,000			

4. Data Station	Hitachi (Japan) BMC (Japan)	U.S.S.R.	National Security
Contract Value - $20,000			
5. Gas Chromatograph	Hitachi (Japan) Shimadzu (Japan) Carlo-Erba (Italy)	U.S.S.R.	National Security
Contract Value - $40,000			
6. AA Spectrophotometer	GBC (Australia) Erdmann-Grun (Germany)	U.S.S.R.	National Security
Contract Value - $38,000			
7. Data Station	Canon (Japan) BMC (Japan) Hitachi (Japan)	U.S.S.R.	National Security
Contract Value - $60,000			

TOTAL CONTRACT VALUE - $880,000

The company concluded by noting that considerable business (in addition to that noted above) was lost in Poland/U.S.S.R. during the 1981/1982 sanction. "We have also lost (not even able to bid) East Bloc contracts issued in November/December with guaranteed shipment by December 21, 1982 since Eastern Bloc foreign trade corporations realize U.S. export licenses cannot be validated quickly. Most of the Eastern Bloc business was given to European competitors with the bulk of the business going to Pye-Unicam, England which is a subsidiary of Philips, Holland."

Turning to the question of licensing delays, a small ($15 million total sales) SAMA member company reports that it presently has approximately $700,000 worth of export license applications for equipment containing embedded computers pending in the approval cycle. These applications are all for free world destinations. Of this total amount, $250,000 worth of the equipment, destined to be exported to France, has been awaiting U.S. government approval since the end of November, 1982. The company has been advised that it will take between 30-60 days to process the applications for the remaining $450,000 worth of products. Foreign manufacturers are shipping competitive equipment out of stock, so even a 10 day delay can cause the cancellation of an order.

This same company has advised SAMA that it was unable to meet competitors' delivery times for $600,000 worth of equipment containing microprocessors during the period of November, 1982-February, 1983 because of unilateral U.S. export licensing requirements and the time involved for the licensing process. All of this equipment was to have been sold in Western Europe. These are the type of applications that are routinely approved by the U.S. government, but only after a 30-60 day review.

Another SAMA firm has indicated that it has 20 export licenses for the export of spectrometers to the PRC. The total value of these applications is approximately $2.5 million. Of the 20 pending license applications, 15 were submitted November-December, 1982. The other 5 were submitted in January-February, 1983. Interestingly enough, while the U.S. government has verbally advised the company that it would likely obtain approval for those applications submitted most recently; there has been no similar word on those 15 applications submitted in November-December of last year.

This has not been a scientific or an exhaustive survey of the experience of SAMA's membership with respect to U.S. unilateral export licensing policy and embedded computers. Rather, due to time constraints, we have depended largely upon the experiences of those SAMA companies who happened to be present during your March 2, 1983 hearing or others with which we are in regular communication. At the same time, I believe that the actual experiences cited above are illustrative of the unique problem confronting SAMA companies as they attempt to compete for markets throughout the world. At the outset, I indicated that the basic problem lies with the unilateral imposition of U.S. export controls on instruments which, by themselves, are not considered to be of military significance, even by the Department of Defense. Only the presence of a microprocessor, or a microcomputer in the instrument puts the instrument in a category for which the U.S. alone requires a validated license. The microprocessors or microcomputers themselves, are is often readily available from foreign sources - sometimes even including the U.S.S.R. - in commercial quantities. The net effect of this unilateral licensing requirement is that the U.S. loses overseas customers. Those customers who value reliable sources of supply simply take their business to our less encumbered foreign competitors. Meanwhile, the U.S.S.R. and other adversary countries are still able to obtain instruments with embedded computers fully equivalent to ours.

We appreciate your interest in this matter, Mr. Chairman. We will be pleased to respond to any additional questions you might have.

Very truly yours,

Eben S. Tisdale
Director of Public Affairs

EST/dr

SAMA 1101 16TH STREET, N.W. WASHINGTON, D.C. 20036 (202) 223-1360

March 16, 1983

The Honorable John Heinz
Chairman
Subcommittee on International
 Finance and Monetary Policy
Senate Banking Committee
5300 Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Chairman:

The purpose of this letter is to respond to those questions submitted by Senator Garn to SAMA's witness, Mr. Gerry Gleason of the Foxboro Company, following Mr. Gleason's appearance before the Subcommittee on International Finance and Monetary Policy on March 2, 1983. Mr. Gleason appeared before the Subcommittee that day to express SAMA's views on the renewal of the Export Administration Act. The questions asked by Senator Garn and SAMA's responses to those questions are listed below:

Question:

Do you oppose giving the Customs Service the responsiblity for the criminal enforcement of the Export Administration Act, and if so, is there any form in which you would support this, or is your opposition unequivocal? Why?

Response:

SAMA did not specifically oppose giving the Customs Service the responsibility for the criminal enforcement of the Export Administration Act in its testimony on March 2, 1983, nor did we specifically support it. In our view, the agency that has the responsibility for enforcement must have the necessary manpower, skills, budget and knowledge to do the job. Neither the Department of Commerce nor the Customs Service is entirely in that position at present. It seems to us that there is nothing to be gained by the transfer and that the time, effort and money might be better spent in supporting the progressing Department of Commerce effort of export enforcement under Deputy Assistant Secretary T. Wu, rather than starting all over again under the Customs Service which lacks many of the necessary technical skills. This view is not unequivocal however, and we would be pleased to review the merits of such a transfer with your staff should you feel that to be desirable.

Regardless of whether the Department of Commerce or the U.S. Customs Service is given the responsibility for the criminal enforcement of the Export Administration Act, we do believe that the lack of formal voluntary disclosure procedures may result in a reluctance on the part of exporters to make disclosures on inadvertant violations of the Export Administration Regulations for fear of incurring severe penalties. In this regard, SAMA has recommended that the government adopt a voluntary disclosure policy so as to further encourage cooperation by the United States exporting community. In our view, such a policy could only enhance the government's ability to stem the export of high technology information and products from the United States and would be consistent with the current policy of the United States Customs Service and the current practice of the Department of Commerce.

Question:

Would you support the conversion of the Federal Trade Commission into an office within the Department of Commerce headed by a Deputy Assistant Secretary?

Response:

SAMA is not certain of the relationship of this question to the issue before the Subcommittee; that being the renewal of the Export Administration Act. In the absence of clarification in the regard, we cannot respond to the question at this time.

Question:

If responsibility for export administration were to remain the responsibility of the Commerce Department, whould you favor making the head of that operation an Under Secretary of Commerce, with no responsibilities other than administering our export control laws?

Response:

At present, the Department of Commerce responsibility for export administration belongs to Under Secretary Lionel Olmer. In addition to various staff services, two major divisions, each under an Assistant Secretary, report to Mr. Olmer. Export administration and export enforcement are still one level further down, under a Deputy Assistant Secretary. We would suggest that both export administration and enforcement should beneficially report to an individual at the Under Secretary level, having no other responsibilities.

I hope this information is helpful to you, Senator Garn and the other members of the Subcommittee. I would, of course, be pleased to respond to any additional questions you or your staff might have with respect to SAMA's views on the Export Administration Act.

Very truly yours,

Eben S. Tisdale
Director of Public Affairs

EST/dr

MARCO
SEATTLE
[illegible] WAY • SEATTLE, WASHINGTON [illegible]
[illegible]
[illegible] CABLE MARCO TELEX [illegible]

23 February 1983

Senator Slade Gorton
Senate Small Business Committee
424 Russell Senate Office Building
Washington, D. C. 20051

Attn: Ann Sullivan

Subj: OBSTACLES TO EXPORTING FACED BY SMALL BUSINESS

Dear Senator Gorton,

Thank you for giving us the opportunity of providing written testimony to be included in the hearing record on the jointly sponsored Small Business Committee of the Senate and the Commerce Committee.

Our company is dedicated to the design and construction of commercial fishing vessels, hydraulic deck machinery, and the supply of outfitting materials for the construction of commercial fishing vessels. To that end, we own and operate a shipyard and manufacturing and repair facility in Seattle, Washington, devoted to the construction of fishing vessels primarily intended for the North Pacific king crab fishery, bottom trawl fishery, and salmon fishing industry; and in San Diego, California, our company owns and operates a shipyard which is dedicated primarily to the construction of tuna purse seine fishing vessels which are designed to operate throughout the world.

Whenever possible, our major efforts have been to export a completed vessel from the United States. Due to the instability of the U. S. dollar, high interest rates, and subsidized foreign competition (particularly interest rates, terms, etc.), our export markets have virtually come to a halt for new vessels.

In 1982, Marco's Manufactured Products Division, Fisheries Development Division and Longline Division, along with our San Diego and foreign subsidiary operations, accounted for $38.5 million of our total corporate sales. More than eighty percent of that was exported from the United States. Our Seattle shipyard delivered five commercial fishing vessels in excess of $10 million to the export market.

Our company is known throughout the world for its excellence in the design and manufacture of hydraulic deck machinery, particularly in the automation of net-hauling systems for purse seine fishing vessels. Over the past several years we have outfitted more than 25,000 fishing vessels world-wide. Today more than ninety-five percent of the world's tuna purse seine fishing vessels are equipped with Marco-manufactured deck machinery.

In areas where we cannot sell a completed fishing vessel, due to non-competitive financing or local import restrictions, we often enter into licensing agreements for the supply of naval architecture services and outfitting materials required by the licensee to build a Marco-designed vessel in a local shipyard. In remote areas of the world, it is sometimes necessary for us to provide virtually everything required for the construction of a vessel, oftentimes including material-handling equipment and machinery for the shipyard itself. A typical outfitting package may consist of main engines, auxiliary engines, generator sets, refrigeration systems, compressors, hydraulic deck machinery packages, electronics, electrical, switch panels, wiring, tubing, port lights, outfitting rigging, fishing gear and net supplies, operational spare parts, marine paints, cathodic protection systems, etc., etc.

To support our fishing vessels and machinery systems which have been sold into the international market, Marco has strategically located subsidiaries to provide maintenance and support facilities for those items which we manufacture and for those manufacturers that we represent. These facilities are located in Panama City, Panama; Lima, Peru; Las Palmas, Grand Canary Islands: Mazatlan, in Mexico; Bilbal, Spain; and Taiwan. In addition to our own subsidiaries, Marco has distributors and licensees in various parts of the world to assist us in our marketing and services.

During the past two years there has been a boom in the construction of large tuna superseiner fishing vessels, particularly for the Government of Mexico. More than thirty new vessels were purchased by Mexican customers in the United States, Canada, Norway, Spain and Italy, along with a local Mexican construction program for a number of similar size vessels in three Mexican shipyards. Our company was privileged to be able to supply the majority of the hydraulic deck machinery and electronics for those vessels, due to the fact that we had developed over the past thirty years a strong leadership position in the industry and a serious network of service facilities.

In 1982, our Seattle facility exported 18 shipsets of tuna hydraulic deck machinery systems to Mexico, Italy and Norway. The vessels in Italy and Norway were being constructed for Mexican clients. In coordination with our hydraulic deck machinery sales, our San Diego subsidiary, Marco Marine San Diego Inc., exported electronic packages These packages consist primarily of the same outfitting equipment which is provided in the average U. S -built tuna superseiner, including the following:

One gyrocompass
Two radars
One recording sounder
One depth sounder
One automatic direction finder
One satellite navigation system
One temperature recorder
One AM/FM stereo cassette player system
One HF/single sideband radiotelephone
One emergency standby single sideband radiotelephone
Spare emergency antennas

One radio receiver
One VHF scanning marine radiotelephone
One synthesized VHF scanning marine radiotelephone
One hand-held portable radiotelephone
One public address system
One intercommunications system
One VHF automatic direction finder
One single sideband citizens' CB radiotelephone
One AM/single sideband radiotelephone
One weather facsimile receiver
One VHF scanner
One color video recorder player/entertainment system
One brine temperature measuring system for ship's refrigeration
One single sideband radiotelephone
One color television system
One wind speed indicator
One aircraft VHF radio
One strobe light
Three two-meter radiotelephones
One package of 15 antennas

With reference to the aircraft VHF radio mentioned, these vessels are equipped with helicopters which are used for spotting fish from the air by the captain of the super-seiner, who spends the majority of his daylight hours over-flying the ocean, looking for schools of tuna.

The electronic equipment package listed above is standard marine electronic off-the-shelf hardware that has been available internationally for a number of years. The radars and echosounders are manufactured in Japan and distributed by our company. The single-sideband and VHF radios, gyroscopes and satellite navigation systems are of American manufacture by American companies, however these also are manufactured in England, France, Spain, Japan and Canada, etc. As a matter of fact, virtually every product listed above can be found advertised, in its current model and configuration, in almost any of the commercial fisheries trade publications, and virtually all of the products can be seen in any of the numerous fisheries trade shows and can be purchased off the shelf from any one of hundreds of dealers inside the United States and in foreign countries.

The reason Marco Marine San Diego and Marco Seattle were able to receive combined orders for the outfitting materials for these vessels is due not only to our intimate knowledge of the business, but also due to the fact that we have assumed total system responsibility for the installation, startup and follow-up service which is essential to efficient operation of today's complicated commercial fishing vessels.

Having exported some 18 hydraulic deck machinery system packages from our Seattle facility, and being in the process of exporting our 17th electronics system package from San Diego to the same customers for installation on the same vessels, we are confident that not only the products we are exporting, but our activities, are well within the guidelines of the Export Administration Act of 1979, and that there exists neither a question of interpretation nor confusion as to the nature of our activities and types and categories of equipment being exported, nor in fact the intent of the law (which we believe to be honorable and a necessity, to avoid the exportation of high technology to unfriendly nations).

Having been previously assured by the manufacturers of those American-made items such as gyroscopes and satellite navigation receivers that both were covered under general export licenses Nos. 6499G and 6599G, and having provided this information to our customs broker, we were completely surprised to learn on 27 January 1983 from our broker that our shipments to Italy for installation on a tuna vessel destined for Mexico had been detained in order to clarify the applicability of the general destination license and Schedule B commodity numbers as listed on our customs declaration under Operation Exodus.

We immediately contacted the Customs office in Long Beach, California, and requested additional information about the procedure, inquiring as to why the shipment was being detained and what information was required in order to clarify any questions they had. We were requested to - and did - supply additional information on the general destination licenses of the equipment. The Customs agent then advised us that there were two items under question: a Sperry gyrocompass and a Magnavox satellite navigator. Our company provided letters from both Sperry and Magnavox to the Customs inspectors, along with copies of export Commodity Control numbers assigned to the product lines by the U. S. Department of Commerce.

Instead of being able to resolve the issue in Long Beach, however, this information was sent to Washington, D. C., by whom we were advised that the Customs Command Center would verify that the license had in fact been granted; but meanwhile we should provide additional information directly to the Command Center. Our company subsequently contacted both Magnavox and Sperry, the U.S. manufacturers of the equipment, and requested that they contact the U. S. Department of Commerce Customs Command Center and provide a complete set of specifications, which was done.

Our major concern was to clarify as quickly as possible any questions in Washington, inasmuch as the clock was running against us since the client's letter of credit was to expire on 31 January. This plea to Washington, however, fell on deaf ears.

On 3 February 1983, following the expiration of our letter of credit, our company contacted the Customs Command Center and we were informed that the items in question now included a Data Marine Depth Sounder, and also included a multi-beam scanner/sonar Model CS-50, manufactured by Furuno Electric Co. of Japan. The Data Marine echo-sounder (an inexpensive, small non-recording flasher-type device developed for the yacht market) is commonly found on pleasure boats of 25 feet in length and up; but in any event, information was provided to the U. S. Customs Agency on this current high-technology product. On the other hand, we found it difficult to provide information to the U. S. Customs on the Furuno CS-50 multi-beam sonar, which was not in this shipment, not sold to this customer, not on our customs declarations, and never seen either physically or visually by any of the inspectors who examined the shipment after it was detained.

On 7 February 1983, we again contacted the Customs inspectors in Long Beach and the U. S. Department of Commerce Command Center in Washington, who advised us that of all of the items contained in our shipment (consisting of 42 items), four were in question, and additional information was still required on all of the items. We therefore sent to Long Beach and Washington new copies of specifications for each product in question, along with copies of our invoices identifying each item.

Subsequent contacts with the Undersecretary of Commerce for International Trade and the International Trade Administration's office in the Department of Commerce in Washington resulted in our being referred back to the district Department of Commerce enforcement branch in Los Angeles, who in turn advised us that everything in our container was suspect, and they suggested that we send further data on everything we had in the shipment to Washington, D. C.

Subsequently, on contacting the Washington, D. C., Customs Command Center, we were informed that the information we had sent had not been received by the proper people, and therefore additional new copies of commercial invoices, packing lists, and complete sets of sales and technical brochures and information were again sent to Washington, D. C. - this time by courier in order to avoid further delays. In the meantime, our customer in Italy was wondering what had happened to his shipment, whereupon we informed him that due to some unexpected delays we had been unable to ship, and we requested from him an extension of his letter of credit.

Ten days later, on contacting Custom's liaison officer and the Department of Commerce in Washington, we were again told that most of the items had been resolved, but that there were still some further delays. They had, however, been contacted directly by the manufacturers of the equipment in a confirmation process of the general destination license, and it was anticipated that a general resolution would be forthcoming shortly.

Subsequent conversations now with Washington, D. C., reveal to us that one of the reasons why our shipment has not been resolved is due to the fact that it is a multi-item manufacture combination mix, and that gives rise to a number of unresolved issues, mainly in matching the technical information we have sent to Washington with the actual customs declaration and invoices. We were also advised that the Japanese-manufactured radars and automatic direction finders are now licensable items under specific customs control numbers, and not general destination.

The last request we received from Washington, prior to 18 February, was to send additional documentation to Washington to replace previously sent documentation which had been "misplaced."

Today, as of the dictating of this letter, our case is not resolved. We feel as if we have waded into a tar pit of bureaucratic legislation, and with each effort to extricate ourselves we sink deeper. In the meantime, the second letter of credit renewal is expiring, and we fully anticipate that our customer will exercise the only option open to him, and that is to buy this same equipment from other international sources so that they can complete and deliver their fishing vessel without suffering builder's delay penalties.

In the meantime, another virtually identical shipment to the same customer, worth approximately $250,000, is now also in jeopardy.

It is truly clear to us that the U. S. Department of Commerce, under the Operation Exodus, has declared war on U. S. exporters. Anything within the broad guidelines of the Export Administration Act of 1975 is now subject to seizure by Customs agents who are acting like bounty hunters, but without the expertise or knowledge to determine whether the shipment they have seized contains technology that may or may not make a significant contribution to the military potential of the country in question, or adversely affect the national security of the United States.

The products we are exporting are available without restriction from sources outside the United States in significant quantity, comparable in technology and quality to those products produced in the United States. A number of the products in our shipments being questioned are, in fact, produced outside of the United States. Although we have demonstrated this, our shipments are still being detained.

In fact, no one today has been able to explain to us the reasons for the detention, or what is required for resolution. We believe that the interpretation of the existing law has gone well beyond its intent. The net effect is paralysis of our exports.

Under the current Act, which was to provide authority to regulate exports to improve the efficiency of export regulation and to minimize interference with the ability to engage in commerce, it is apparent to us that Operation Exodus has an entirely different interpretation of not only this Act, but of their authority and freedom of literally and unilaterally placing the exporter in the position of being found guilty without charges until he can prove himself innocent.

The frustration of talking with those responsible in Washington is overwhelming, and we appeal to this Committee to enact changes and/or revisions in the legislation that will provide clear guidelines for both sides to operate in an uninterrupted, businesslike manner.

Without your assistance, our business is in jeopardy.

Thank you for the opportunity of presenting this testimony.

Very truly yours,

Charles Hart

Charles R. Hart
Senior Vice President

CRH:hb

STATEMENT OF
ARMISTEAD I. SELDEN
PRESIDENT
AMERICAN LEAGUE FOR EXPORTS AND SECURITY ASSISTANCE, INC.

Mr. Chairman, Members of this Committee:

The American League for Exports and Security Assistance (ALESA) appreciates the opportunity to present testimony to the Subcommittee on International Finance and Monetary Policy with respect to the extension of the Export Administration Act. ALESA is made up of thirty-four corporations employing hundreds of thousands of workers and five unions representing several million members (see attached list).

ALESA's members recognize the legitimacy of our government controlling the overseas availability of certain technologies and goods in order to protect U.S. national security interests. Such controls are, however, most effective when applied on a multilateral basis. It does no good to control U.S. exports if similar products are available from other sources.

In general, the basic problems with these kinds of controls have tended to be in their administration, rather than in the statutes themselves. Clear criteria are needed for the imposition of such controls, so that uncertainty is kept to a minimum. The licensing process should be conducted expeditiously. Government officials should be realistic about the often ready availability of products from foreign sources. Finally, the number of items under control should be kept to the minimum consistent with real security interests.

The private sector should also be able to participate in some stages of the decision making process concerning what is to be controlled, as is currently provided for in Section 5(h) of the Export Administration Act. The world of high technology is a rapidly changing one, as is the degree to which other nations produce competitive goods. Our companies have considerable experience in what our technologies can do, and in what kind of competition we face overseas. In fact, most U.S. corporations themselves have a strong interest in assuring that certain high technology which has been developed here not be transferred abroad in ways which would undercut U.S. competitive commercial interests.

Unless the private sector has an input into the decision making process, including some form of appeals process with respect to decisions taken by the Executive Branch, it is almost inevitable that bureaucracy will fall into a "when in doubt-control" syndrome. This will result in an effort by the government to control too broad a range of technology and products. This in turn will likely result in unnecessary commercial losses, and a control system which is spread too thin to concentrate on truly critical technologies.

The concern over private sector involvement has been heightened in recent weeks with the implementation of DOD Directive 2040.xx. That Directive provides guidelines on the policy and process whereby DOD will review its position on the export of sensitive technology. As outlined in the Directive, there seems to be no room for private sector inputs or appeals, and a single office can force DOD to take a position against a specific export. Such a process almost guarantees a highly restrictive approach to exports in excess of real security needs.

For purposes of this testimony, however, ALESA would like to focus its comments on the use of export controls to accomplish foreign policy objectives. There are three major problems with using controls for such purposes -- they don't work, they are inequitable in how they distribute the cost of such controls among different segments of American society, and they are inherently unpredictable, and hence undercut the reputation of the United States as a reliable trading partner.

The experience of the United States with export controls as a means of influencing the policies of other countries can only lead to skepticism as to their effectiveness. However laudible U.S. objectives may have been which triggered the imposition of controls, we must face the hard facts of life. In spite of U.S. export controls, the Soviets are still in Afghanistan. Solidarity is still outlawed in Poland. Colonel Qaddafi is still pumping oil and supporting movements hostile to our interests. Latin American countries continue to purchase high performance weapons.

While it is difficult to identify positive foreign policy results from the imposition of export controls, it is much easier to note the costs to American business, labor and farmers of the imposition of such controls. The U.S. now supplies thirty percent, as opposed to seventy percent, of the world's largest market for grain exports. Komatsu, rather than Caterpillar, is supplying pipelayers to the Soviet Union. European and Canadian technicians in Libya now order European, Canadian, and Japanese oil-related technology for that country. Latin American armed services fly French and Soviet aircraft, sail in British surface vessels and German submarines, and use French, Soviet and Brazilian armor.

It is frustrating to deal with unpleasant choices and truths. Certainly all ALESA members would condemn the actions of the Soviet Union in Afghanistan, the events in Poland, and the foreign policies of Qaddafi. But there is little evidence that export controls have had much impact on any of these. There are those who would agree with that observation, but argue that nonetheless export controls are a useful way to express our moral outrage with a particular country's actions. From the Executive Branch's perspective, export controls can also be an attractive way to express such indignation, because there are no direct budgetary costs. But we must not lose sight of the fact that we are expressing our indignation at the cost of other American's jobs and money.

This is perhaps what is most troubling about the use of export controls. They are imposed to promote national foreign policy interests, but the cost of the controls falls on specific workers and businesses. By contrast, our expenditures on defense, on foreign assistance, and on the foreign policy establishment are taken from general tax revenues, to which all citizens contribute. We note that farm groups have, with considerable success, attempted to assure that farmers will not be singled out in the future. They obtained legislation in the last session which guarantees current contracts be honored, and which requires that in the event of controls, farmers shall be reimbursed for their losses from the general federal budget. If this is reasonable for the agricultural sector, would not equity require that American workers and businessmen also receive similar treatment?

Finally, export controls linked to foreign policy objectives are inherently unpredictable. Here we can contrast controls imposed for foreign policy reasons with those imposed for security reasons. In the latter case we know that controls are likely to be imposed for a time on new technologies with military application. As still newer technologies are developed, or as a technology becomes available from other sources, security controls will be relaxed and eventually dropped. There is thus a generally predictable pattern for such controls. In the case of foreign policy related controls, however, no such pattern exists. Foreign policy concerns change constantly. It is not clear with which countries we may have differences a few years from now, nor what products a given Administration might choose to control. Our actions with respect to imposing controls on grain to the Soviet Union, then lifting them, then imposing controls on various technologies, then lifting them, certainly typifies this problem of unpredictability.

The lesson to potential purchasers of U.S. goods and technologies is clear -- don't do it if there is an alternative. If there is a choice between a reliable supplier, and one which is not, there is a natural tendency to opt for reliability, even if his product might be a bit inferior or more expensive. This is true even for friendly countries, particularly if we insist on asserting control over U.S. goods even after they have left our shores and have been incorporated into another country's final product. The assertion of extraterritorial authority also makes U.S. subsidiaries far less attractive to most countries, and can put U.S. management in situations where they must violate either U.S. or host country laws.

What, then, should we do? Quite frankly, ALESA believes a strong case can be made that the foreign policy section of the Export Administration Act should be allowed to lapse. The President would still have adequate authority to control exports for national security reasons, and in the case of a real national emergency, both under Section 5 of the Export Administration Act, and under other laws as well. But that is probably politically unrealistic. If so, we would strongly support the kind of approaches taken in S.397 which go a long way toward meeting the concerns outlined above.

The requirement in Section 7 of S.397 that the President determine the effects of export controls and report on these determinations is a helpful step. In redrafting this Section, the President might be specifically required to state the specific foreign policy objective of imposing such controls. In the case of the so-called pipeline sanctions, the objectives at different times seemed to relate to Soviet conduct, to the actions of the Polish government, to concern over energy dependence of Western Europe on the Soviet Union, and to the issue of credit subsidies to the Soviets. Such confusion makes it difficult to obtain cooperation from our allies, or compliance from our adversaries.

A Presidential reporting provision also ought to have a specific reference to the consultations with the private sector which are now required by Section 6(c) of the current Export Administration Act. This provision does not seem to have been regarded with great seriousness in the last exercise of export controls for foreign policy reasons. A specific requirement that the results of such consultations must be included in a report to be issued before or at the time of the imposition of controls might add some teeth to this provision.

ALESA strongly endorses the concept of sanctity of contracts with respect to export controls imposed for foreign reasons, as contained in Section 15 of S.397. There is no question but that the reputation of American business and agriculture as dependable suppliers has suffered in recent years because of the imposition of controls on existing contracts. Through our own actions we have stimulated former customers to seek alternative sources, or to begin or increase the production of certain imported goods themselves. We have thus created our own competition.

Furthermore, uncertainty about future U.S. export policy with respect to existing contracts has led to business turning down contracts, particularly with respect to goods destined for East Bloc countries, even though at the time the U.S. government had no objections to such exports. This is a particular problem where the product involved is custom designed for a particular customer requirement and involves considerable sunk costs in materials and labor before shipment. Faced with this dilemma, companies are likely to turn down certain business, or to produce such goods in their overseas subsidiaries, where host government export policy is more predictable, and insurance against any changes can be obtained.

For this reason we also believe the notion of some sort of government program which insures against changes in export policy is worth investigating. As noted, legislation has already been passed protecting farmers against new shifts in U.S. law. It would seem equitable to at least look into the possibility of providing all U.S. citizens similar protection. The Overseas Private Investment Corporation, or the Export-Import Bank, might be asked to investigate or implement such an insurance program. I would note that such a program should be complimentary to a sanctity of contract provision in the Export Administration Act, as the President has authority under other laws to abrogate existing contracts for reasons related to security or national emergencies.

ALESA would also recommend that Section 6 of the Export Administration Act be amended to make clear that the President could not limit the re-export of U.S. goods and components for foreign policy reasons. Renunciation of extraterritorial authority would increase the attractiveness of U.S. products and technology overseas, and make it easier for U.S. investors to be regarded as good corporate citizens.

If in the end it should prove impossible to obtain such a change in the Export Administration Act, ALESA would suggest that consideration be given to at least limiting the assertion of extraterritorial authority over U.S. components once they are integrated into a foreign made final product. Under current law, potential overseas purchasers of U.S. components must worry that at some time in the future the U.S. Government might attempt to control exports of their goods solely because they contained those U.S. components.

This problem is particularly acute in the high technology areas where the U.S. is, and must remain, competitive. One possible solution would be to incorporate a threshold in Section 6 of the Export Administration act which would make clear that the President would not be empowered to impose extraterritorial controls over end use products in which U.S. components amounted to less than a specific percentage of total value, such as 20-25%. Such a limit would only apply to export controls related to foreign policy. Controls related to security concerns would not be covered by the limitation.

Finally, ALESA applauds the focus in S.397 on the question of foreign availability. We do not protect American security, nor penalize our adversaries, when we deny export licenses for products or technology which are available from other suppliers. Rather we reduce jobs and economic activity in the short run, and actually threaten our technological base in the longer run as other countries use export earnings for further research and development which might otherwise have been spent by American producers. Placing the burden of proof on the government to prove that goods are not available overseas, and increasing the emphasis on the Coordinating Committee (COCOM), are both sensible steps in S.397 which relate to this issue.

To summarize, in this testimony ALESA has tried to present a number of the concerns of our members, and has discussed several options for meeting them. ALESA members realize that S.397 was introduced in order to stimulate discussion, and as a basis for the Subcommittee's future markup. The debate on the extension of the Export Administration Act will be intensive, and in the end Congress will have to balance many views. For that reason, ALESA has outlined its preferred positions, but also has included some alternatives which, although less desirable, are still preferable to current law.

ALESA hopes the above comments will be helpful to the Subcommittee deliberations, and looks forward to providing any further assistance to the Subcommittee which may be useful in the future.

American League for Exports and
Security Assistance, Inc.

ARMISTEAD I. SELDEN
PRESIDENT AND GENERAL MANAGER

GEORGE C. AXTELL
VICE PRESIDENT, SECURITY AFFAIRS

JOEL L. JOHNSON
VICE PRESIDENT, ECONOMIC AFFAIRS

WILLIAM H. HULSE
CHAIRMAN

JAMES B. BOOE
VICE CHAIRMAN

475 L'ENFANT PLAZA, S.W.
SUITE 4400
WASHINGTON, D.C. 20024

PHONE
(202) 554-1107
(202) 554-1108

ALESA MEMBERSHIP

COMPANIES

- Aerojet General Corporation
- American Hoist and Derrick Company
- AM General Corporation
- Avco Corporation
- Beech Aircraft Corporation
- The Boeing Company
- Ducommun Incorporated
- EDO Corporation
- Elexco International, Inc.
- Emerson Electric Company
- FMC Corporation
- Frost and Sullivan, Inc.
- Garrett Corporation
- General Dynamics Corporation
- Gould Inc.
- Harsco Corporation
- Hazeltine Corporation
- Hughes Aircraft Company
- Hughes Helicopters
- Lear Siegler, Inc.
- Lockheed Corporation
- Martin Marietta Aersopace
- The Mead Corporation
- Napco Industries, Inc.
- Northrop Corporation
- Pneumo Corporation
- Raytheon Company
- Rockwell International
- Rohr Industries, Inc.
- The Singer Company
- Teledyne, Inc.
- United Technologies Corporation
- Vought Corporation
- Westinghouse Electric Corporation

UNIONS

- Communications Workers of America, AFL-CIO
- International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers
- International Union, United Automobile, Aerospace & Agricultural Implement Workers of America
- Marine Engineers' Beneficial Association, AFL-CIO
- United Brotherhood of Carpenters and Joiners of America, AFL-CIO

REAUTHORIZATION OF THE EXPORT ADMINISTRATION ACT

WEDNESDAY, MARCH 16, 1983

U.S. SENATE, COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS, SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY,
Washington, D.C.

The subcommittee met at 10 a.m. in room SD-538 of the Dirksen Senate Office Building, Senator John Heinz (chairman of the subcommittee) presiding.

Present: Senators Heinz and Dixon.

OPENING STATEMENT OF SENATOR HEINZ

Senator HEINZ. The Subcommittee on International Finance and Monetary Policy will come to order.

This is the third in a series of committee hearings on renewal of the Export Administration Act. The first hearing focused primarily on Senator Garn's bill, S. 434, to create an Office of Strategic Trade. The second hearing continued the emphasis on strategic issues by reviewing our national security export control programs.

Today's hearing will examine what is currently section 6 of the act, foreign policy controls. As in the past, I've asked our witnesses today to comment specifically on the various bills that have been introduced, S. 434, Senator Garn's bill I mentioned; my own bill, S. 397; and Senator Nunn's bill, S.407.

In the past year it's become virtually impossible to read section 6 outside the context of the most recent use of foreign policy controls; namely, those imposed in an effort to block the construction of the natural gas pipeline from the Soviet Union to Western Europe.

While I believe most members of the committee, including myself, would have preferred that the pipeline not be built and supported the administration's efforts to persuade our allies in Europe not to proceed with it, I also believe that there is little doubt in retrospect that the controls actually imposed became an economic and foreign policy disaster. We have not stopped the pipeline. By insisting on extraterritorial extension of our law, we have created serious frictions with our allies. We have denied American companies the economic benefits of participation in that project and we have cast serious doubts on the credibility of our manufacturers as suppliers.

How could we expect our businesses to sell abroad if neither they nor their buyers know from day to day whether our Government will permit them to sell?

I would be the first to maintain that the President needs authority to impose controls for foreign policy reasons and I would agree that there are times when the foreign policy message we send with those controls is in fact more important than the economic cost to our manufacturers and our country. Unfortunately, though, both this administration and its predecessor with respect to the grain embargo failed to weigh the benefits and costs of their action.

As a result, we have had policies based only on the hoped for benefits while our economy was left to suffer the unanticipated costs. Even worse, these costs are not just short-term losses in sales but permanent shifts in the market away from U.S. producers.

The problem for this committee will be to find a way to maintain the President's authority to impose foreign policy controls but to do it in a manner that insures the controls will accomplish their purpose and that proper analysis with full private sector involvement has been done.

My bill attempts to strike that compromise by elevating the list of conditions that the President must consider under current law to a set of determinations that he must make with a report to the Congress prior to imposing controls, by strengthening the foreign availability provisions of section 6, and further by providing that any controls imposed will not apply to existing contracts but will be prospective in nature.

I hope our witnesses today will comment on these proposals and also on the central dilemma of how to guide the President's authority without excessively constraining it.

Before I call upon our panel of private sector witnesses here today, I would want to recognize Senator Dixon of Illinois, a very valuable member of this committee and of this subcommittee. Senator Dixon, if you have a statement, this would be the time to make it.

OPENING STATEMENT OF SENATOR DIXON

Senator DIXON. Thank you, Mr. Chairman.

I'm pleased to be here this morning and I'm particularly pleased to see that the Business Roundtable is being represented today by Erskine Chapman, executive vice president of the Caterpillar Tractor Co., which is I'm sure as you know a company that employs one or two folks in my State, Senator. Caterpillar is a major exporter, and because it has been among those most adversely affected by the imposition of foreign policy controls, Mr. Chapman's testimony is of particular importance and relevance.

Improving our export performance is increasingly crucial to the Nation's economic health; 80 percent of the jobs created in the United States between 1977 and 1980 were due to increased exports. More than 80 percent of all new manufacturing jobs depend on overseas sales and the other side of the coin is that more than a million of the jobs lost in the past few years can be traced to the deterioration of trade.

While that deterioration was not caused solely by issues arising out of the Export Administration Act, actions taken under the act has caused major problems for U.S. exporters costing us sales abroad and damaging our reputation as a reliable supplier.

An editorial from last Sunday's Chicago Sun Times makes the point very well. It states that because of the President's misguided policy on economic sanctions Japanese industry might enter at America's expense through trade talks with the Soviet Union. That's just what happened last week. Komatsu, Japan's biggest construction machinery company nailed down a multibillion dollar deal to supply large pipelayers for the Soviet's big Siberian natural gas pipeline. The Caterpillar Tractor Co. of Peoria might well have won that contract except for two factors: The embargo on selling pipeline equipment to the Soviets which opened the door to foreign suppliers; and a prolonged strike at Caterpillar that was damaging but less important than the Government ban.

Now I don't blame the strike on flaws in the Export Administration Act. I do think, however, that the act is flawed and that those flaws must be repaired. I'm reviewing the chairman's bill, S. 397. In my view, it makes a number of very meritorious suggestions that will help accomplish the needed tightening of the act and with which I'm in general accord. I'm also aware that the distinguished witnesses appearing before us this morning have a number of helpful and well thought-out suggestions to make. I look forward to hearing their detailed recommendations.

The Sun Times editorial concludes that the goal now is to prevent a recurrence of such nonsense. The Soviets haven't been hurt. Illinois has. Don't let it happen again. That's why we're here this morning, Mr. Chairman. We can't let it happen again. We need to insure that the Export Administration Act is reformed so that controls are imposed only when they are in our national interest to insure that we are acting along with our international competitors and not alone, and to insure that when controls are necessary they actually work, hurting the country against which they are aimed more than they hurt the U.S. businesses and the U.S. economy.

This hearing is a step toward accomplishing those objectives. Mr. Chairman, I look forward to working with you and other distinguished members of the committee and with the witnesses testifying here today in an effort to see that needed changes are made.

Senator HEINZ. Senator Dixon, thank you. I commend you on your statement. I happen obviously to feel very much as you do. I also just want to second your note that we do look for better suggestions. I appreciate your kind words about S. 397. I wouldn't pretend it's perfect and any suggestions you or our witnesses have would be gratefully received.

Our first witness today is going to be Mr. Larry McQuade representing the Emergency Committee for American Trade. He'll be followed by Mr. Chapman of the Business Roundtable, by Mr. O'Keefe of the NAM, by Mr. Downey of the Chamber of Commerce; by Mr. Giffen of the New York District Export Council; and Mr. Neely of the Petroleum Equipment Suppliers Association.

So, Mr. McQuade, would you please proceed.

STATEMENT OF LAWRENCE McQUADE, REPRESENTING THE EMERGENCY COMMITTEE FOR AMERICAN TRADE, SENIOR VICE PRESIDENT, CORPORATE ADMINISTRATION, W. R. GRACE & CO.

Mr. McQUADE. Thank you, Mr. Chairman.

My name is Lawrence McQuade. I'm senior vice president of W. R. Grace & Co. I was an Assistant Secretary of Commerce under President Johnson and had responsibility at that time for export controls as one part of my job. I'm here representing the Emergency Committee for American Trade. In 1981, members of the Emergency Committee for American Trade had sales of $700 billion and they employed over 5 million employees. They are in fact major actors in the international import and export scene.

I think you have summed up very well the main points which we are trying to make.

We feel on the foreign policy controls that neither the costs nor the benefits are properly evaluated. The objective of our suggestions would be to make sure that that happens.

REPUTATION AS UNRELIABLE SUPPLIER

We start with the notion that foreign policy export controls generally don't achieve their prime objective. They don't change the political behavior of other nations. In the course of not achieving their own objective, they create some very difficult problems for the business community and for the American economy. The United States gets a reputation as an unreliable supplier. Not only do we lose the immediate sale, but we have in many instances had permanent loss of markets. Where foreign policy controls were imposed on soybeans, the Japanese started to foster production of soybeans in Brazil because they didn't want to be relying on somebody who would not be able to continue to deliver the product they needed.

A lot of ECAT member firms have been subjected to unilateral foreign policy export controls. Markets which they had been developing for years and years ended up being lost overnight because the controls appeared to be arbitrarily applied by the United States.

Another consequence, of course, is if replacement parts are an integral part of your first shipment, and you cut them off, then your reliability continues to be subverted by these kinds of controls.

EXTRATERRITORIALITY PROBLEM

A key thing, of course, which we have seen very dramatically illustrated in the last year is the problem of extraterritoriality. It not only hurts the economies of our friends but it hurts us politically with them. After World War II, when the United States was the preeminent economic power, we were in a position to enforce foreign policy export controls in a unilateral fashion, but today those efforts are frequently doomed to failure by the ability of the country against whom they are directed to obtain the goods or technologies under control from other sources. So if things don't work, we get the worst of all possible worlds. Moreover, it carries over, I think, in our efforts to achieve a common trade policy with other nations. They object to our acting unilaterally and to our seeking to impose our will within countries other than our own. This is a major problem which we feel needs to be dealt with and which you are addressing.

Now let me just talk a minute or two about our specific recommendations, most of which parallel your bill, Mr. Chairman.

The ECAT members see a need for the establishment of specific procedures to be followed by the Executive before unilateral foreign policy controls are imposed. Specifically, we think the Executive should be required to notify the Congress of his intention to impose foreign policy export controls not less than 45 days before the day on which the Executive would impose them and also to give an opportunity for innocent parties to comment with respect to those controls during that 45-day period.

Of course, we recognize that if we have a treaty or other international agreement to which the United States is a party, it would not be appropriate, perhaps, to require this procedure, but in the absence of that special situation, we feel that our proposed procedure is highly desirable.

Second, we would like the time period beyond which the export controls must expire to be 6 months rather than the full year now prescribed. If the administration wants to extend the controls further at the end of the 6 months, that extension should also meet the same procedural requirements that we are suggesting.

Our membership believes that specific conditions should be met before the President imposes, expands or extends unilateral foreign policy controls. This contrasts with the current statute, as you know, Mr. Chairman, which sets forth criteria which should be considered. We support your proposal that would require the President to determine, among other things, that like goods or technologies or directly competitive goods or technologies are not available from foreign competition and to determine that evaluations have been made as to likely effects, including economic impacts, of the proposed controls and to report these determinations to the Congress in some detail.

A number of ECAT firms have been burned on the problem of foreign availability. We believe that that provision in the statute has been narrowly interpreted by the Executive and that goods and technologies made subject to controls have been determined not to be available from abroad because the foreign goods and technologies are not precisely comparable. This is one of the most difficult problems under the act and it's very hard to prescribe in statutory terms how you can get the quality of judgment we really want to achieve. We believe that the concept of foreign availability needs to be clarified to indicate that comparability covers not only like goods and technologies but also directly competitive goods and technologies.

With this clarification, the foreign availability provision should better realize the congressional intent that export controls not be imposed when the result will simply be to abdicate business to U.S. business' foreign competitors.

On the subject of extraterritorial application, we believe the statute should not apply to U.S. foreign subsidiaries, branches, or licensees. In the case of multilateral controls, activities of these U.S. foreign subsidiaries, branches or licensees would be controlled by the governments of the countries in which they are located. That seems to us to make sense.

SANCTITY OF CONTRACTS

Finally, I'd like to comment on the question of the sanctity of contracts. Foreign policy export controls imposed by the United States should be made compatible with the internationally recognized concept of sanctity of contracts, a concept which is important to the long-term commercial and security interests of the United States. The act should be amended to allow the prospective application of foreign export controls—but only prospectively.

We specifically recommend that foreign policy controls should not be imposed on goods or technologies which are exported from the United States to a given country performance of a binding contract when that contract was entered into before or under an export license issued before the date upon which the Executive notifies the Congress of his intention to impose controls on exports to that country.

In short, ECAT views positively the inclusion of a sanctity of contracts provision in the Senate bill 397. That's the essence of what I wanted to say, Mr. Chairman.

[Complete statement follows:]

STATEMENT OF
THE HONORABLE LAWRENCE C. MCQUADE, SENIOR VICE PRESIDENT, CORPORATE ADMINISTRATION, W.R. GRACE AND COMPANY
ON BEHALF OF
THE EMERGENCY COMMITTEE FOR AMERICAN TRADE BEFORE THE SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY OF THE SENATE BANKING, HOUSING AND URBAN AFFAIRS COMMITTEE HEARING ON THE FOREIGN POLICY EXPORT CONTROLS PROVISIONS OF THE EXPORT ADMINISTRATION ACT OF 1979.

Wednesday, March 16, 1983

Mr. Chairman, I am pleased to be with you today on behalf of the Emergency Committee for American Trade, or ECAT. I am Lawrence McQuade, Senior Vice President, Corporate Administration, W.R. Grace and Company. I served as Assistant Secretary of Commerce for Domestic and International Business during 1965-67 where I had responsibility for administering the export control law.

I would like briefly to summarize ECAT's views on foreign policy export controls. Mr. Chairman, I ask that our formal ECAT statement on the EAA be made a part of the hearing record.

GENERAL COMMENTS

ECAT believes that foreign policy export controls do not as a general rule achieve the principal objective for which they are imposed, that is, effecting change in the political behavior of other nations. This is especially the case with controls for which the United States does not have the support of its allies and in respect of controls that the United States imposes unilaterally.

Indeed, the imposition of such unilateral controls may have negative effects that far outweigh any assumed benefits of "going it alone," i.e. proceeding without the support of our allies on export controls.

Among the negative effects of imposing unilateral controls is the promotion of the view that the United States is an unreliable supplier, that is, that U.S. companies cannot be relied upon to supply the goods and services which they contract to supply.

Foreign firms and governments cannot be expected automatically to switch back to U.S. goods and services if and when U.S. foreign policy export controls are taken off. In this sense, the unilateral imposition of foreign policy export controls leads to the permanent loss of markets to U.S. firms.

A number of ECAT member firms have been subjected to unilateral foreign policy export controls over the past few years. The vital business that they have lost has been picked up by their foreign competitors. The latter are the only winners when unilateral controls are imposed by the United States. Our firms and their employees are the losers. Markets which have taken years to develop can be lost overnight when unilateral foreign policy controls are arbitrarily applied by the United States.

A particular concern for foreign customers is the question of replacement parts. If they are subjected to the controls, what good is the U.S. product? To improve their chances of obtaining what they need by way of goods and supplies, foreign governments can be expected to turn to non-U.S. sources.

A further and fundamental concern is the adverse impact that follows from the extraterritorial application of unilateral U.S. controls on the economies of our allies. Indeed, the economic costs to them may well be greater than those of the controlled countries whose political behavior we desire to change. To these economic costs must be added the political costs which are associated with differences with our allies over the imposition of foreign policy export controls, particularly when they are applied on an extraterritorial basis.

In the period after World War II, when the United States was the preeminent economic power, it was in a position to enforce foreign policy export controls in a unilateral fashion. Today such unilateral controls are frequently doomed to failure by the ability of the country against whom they are directed to obtain the goods or technologies under control from other sources.

Not to be overlooked too as a reason against imposing foreign policy export controls in a unilateral fashion is the havoc they wreak with the efforts of the United States to obtain the adherence of its allies and major trading partners to common rules to guide international trade and investment.

To deal with these situations, ECAT members believe that the foreign policy export control section of the EAA needs revision in a number of areas.

SPECIFIC RECOMMENDATIONS

1. Procedures Under Which Unilateral Controls Are Imposed. ECAT members see the need for the establishment of specific procedures to be followed by the Executive before unilateral foreign policy export controls can be imposed.

Specifically, ECAT believes that the Executive should be required to notify the Congress of his intention to impose foreign policy export controls not less than forty-five days before the day on which he would impose them as well as to provide an opportunity for any interested party to comment with respect to the proposed controls during the forty-five-day period. There is no such requirement in the current statute.

ECAT recognizes, however, that this procedure should not restrict the ability of the President to impose foreign policy controls in order to fulfill obligations of the United States pursuant to treaties or other international agreements to which the United States is a party.

Furthermore, the current statute provides for the expiry of unilaterally imposed foreign policy controls one year after their imposition. ECAT believes that more frequent and careful review of foreign policy export controls is necessary. This can be achieved by establishing that (a) such controls expire six months after the date on which they are imposed and (b) their extension or expansion requires the Executive to recomply with the conditions met at the time of their original imposition.

2. Conditions Under Which Unilateral Controls Are Imposed. ECAT members believe that specific conditions should be met before the President imposes, expands, or extends unilateral foreign policy export controls. If the recommended conditions cannot be met, the presumption is that the President should not impose the controls. This contrasts with the current statute in which the criteria set out for imposition of foreign policy export controls are only to be considered by the President.

ECAT's recommendations would require the President to determine, among other things, that (1) like goods or technologies or directly competitive goods or technologies are not available from foreign competition and (2) evaluations have been made as to the likely effects, including economic impacts, of the proposed controls.

Furthermore, in a report to Congress, the President should be required to report in detail how these conditions have been met. His report should also respond to comments received from interested parties on the proposed controls.

Similar changes in the conditions under which controls are imposed are contemplated in S.397, and these ECAT supports.

3. Foreign Availability. ECAT members believe that the foreign availability provision in the statute has been narrowly interpreted by the Executive. Goods and technologies made subject to controls have been determined not to be available abroad because the foreign goods and technologies are not precisely "comparable." ECAT believes that the concept of foreign availability needs to be clarified to indicate that comparability covers not only like goods and technologies but also "directly competitive" goods and technologies.

With this clarification, the foreign availability provision should better realize Congressional intent that export controls not be imposed when the result will simply be to abdicate business to U.S. foreign competitors.

4. Extraterritorial Application. ECAT members believe that foreign policy controls should not have extraterritorial application, i.e., they should not apply to U.S. foreign subsidiaries, branches, or licensees.

In the case of multilateral controls, activities of these U.S. foreign subsidiaries, branches, and licensees would be controlled by the governments of the countries in which they are located. ECAT members think this is appropriate.

5. Sanctity of Contracts. Foreign policy export controls imposed by the United States should be made compatible with the internationally recognized concept of the sanctity of contracts, a concept important to the long-term commercial and security interests of the United States. The Act should be amended to allow only the prospective application of foreign policy export controls.

We specificallly recommend that foreign policy controls should not be imposed on goods or technologies which are exported from the United States to a given country in performance of a binding contract when that contract was entered into before, or under an export license issued before, the date on which the Executive notifies the Congress of his intention to impose controls on exports to that country.

ECAT views positively the inclusion of a sanctity of contracts provision in S.397.

Mr. Chairman, this concludes my presentation. I and other representatives of ECAT would be pleased to assist you in whatever ways that we can as you continue your review of the EAA. I would be happy to respond to any questions.

STATEMENT OF
THE EMERGENCY COMMITTEE FOR AMERICAN TRADE
BEFORE THE SUBCOMMITTEE ON
INTERNATIONAL FINANCE AND MONETARY POLICY
OF THE SENATE BANKING, HOUSING, AND URBAN AFFAIRS COMMITTE
HEARING ON
THE FOREIGN POLICY EXPORT CONTROLS PROVISIONS OF
THE EXPORT ADMINISTRATION ACT OF 1979
Wednesday, March 16, 1983

INTRODUCTION

The Emergency Committee for American Trade ("ECAT") is an organization of the leaders of 63 large U.S. firms with extensive overseas business interests. ECAT member companies had 1981 worldwide sales of nearly $700 billion and employed over five million people. The companies are major U.S. exporters. They contribute significantly to the U.S. balance of payments both through their exports and through the profits earned by their foreign affiliates and joint ventures.

Because of its long-standing support for the expansion of international trade and investment, ECAT members have long been and continue to be concerned with the effects that the Export Administration Act (EAA) has on the export sector of our nation as well as on investments abroad by the United States. ECAT member companies have asked ECAT to focus on the imposition of export controls for reasons of foreign policy. In addition, our members have asked that we comment on the need to improve the day-to-day implementation of the EAA itself.

SUMMARY OF BASIC RECOMMENDATIONS

In the area of foreign policy export controls, it is felt that the current statute needs strengthening in several areas.

First, it is felt that the Act is deficient in procedural requirements, especially in not requiring a formal comment period before foreign policy export controls can be imposed by the Executive.

Second, it is felt that the Act should set out a series of specific conditions, including the determination of the economic impact of proposed controls, to be met before controls can be imposed

Third, it is felt that the foreign availability provision in the statute should be tightened up in order to better realize Congressional intent that export controls not be imposed when the result will simply be to abdicate business to U.S. foreign competitors.

Fourth, it is felt that the Act itself should not, as it does now, allow for extraterritorial imposition of foreign policy export controls.

Fifth, the Act should not, as it now does, allow for imposition of foreign policy export controls with retroactive effect.

And, sixth, it is felt that unilaterally-imposed foreign policy export controls should expire earlier than one year after imposition, as is provided under current law.

In the second major area of ECAT concern with the EAA -- overall implementation of the Act -- five basic points have been agreed to by the membership.

First, we should call for the publication of export control rulings analogous to the rulings published by the Department of the Treasury in the tax area.

Second, Department of Commerce resources in the area of export controls should be strengthened.

Third, export control functions should not be transferred from the Department of Commerce and other government departments to an independent agency.

Fourth, new forms of licenses should be developed covering numerous export transactions of militarily critical technologies and equipment to CoCom countries.

And fifth, we recommend the development of a judicial review provision to ensure compliance with the Act.

GENERAL COMMENTS

We would now like to elaborate on the above recommendations on foreign policy export controls and on overall implementation of the EAA.

FOREIGN POLICY CONTROLS

ECAT believes that foreign policy controls do not as a general rule achieve the principal objective for which they are imposed, that is, effecting change in the political behavior of other nations. This is especially the case with controls for which the United States does not have the support of its allies and in respect of controls that the United States imposes unilaterally.

Indeed, the imposition of such unilateral controls may have negative effects that far outweigh any assumed benefits of "going it alone," i.e. proceeding without the support of our allies on export controls.

First among the negative effects of imposing unilateral controls is the promotion of the view that the United States is an unreliable supplier, that is, that U.S. companies cannot be relied upon to supply the goods and services which they contract to supply.

Foreign firms and governments cannot be expected automatically to switch back to U.S. goods and services if and when U.S. foreign policy export controls are taken off. In this sense, the unilateral imposition of foreign policy export controls leads to the permanent loss of markets to U.S. firms.

A number of ECAT member firms have been subjected to unilateral foreign policy export controls over the past few years. The vital business that they have lost has been picked up by their foreign competitors. The latter are the only winners when unilateral controls are imposed by the United States. Our firms and their employees are the losers. Markets which have taken years to develop can be lost overnight when unilateral foreign policy controls are arbitrarily applied by the United States.

A related concern for foreign customers is the question of replacement parts. If they are subjected to the controls, what good is the U.S. product? To improve their chances of obtaining what they need by way of goods and supplies, foreign ~~governments~~ purchasers can be expected to turn to non-U.S. sources.

A further and fundamental concern is the adverse impact that follows from the extraterritorial application of unilateral-U.S. controls on the economies of our allies. Indeed, the economic costs to them may well exceed the potential economic costs for those countries whose political behavior we desire to change. To these economic costs must be added the political costs which are associated with differences with our allies over the imposition of foreign policy export controls, particularly when they are applied on an extraterritorial basis.

In the period after World War II, when the United States was the preeminent economic power, it was in a position to enforce foreign policy export controls in a unilateral fashion. Today such unilateral controls are frequently doomed to failure by the ability of the country against which they are directed to obtain the goods or technologies under control from other sources.

Not to be overlooked too as a reason against imposing foreign policy export controls in a unilateral fashion is the havoc they wreak with the efforts of the United States to obtain the adherence of its allies and major trading partners to common rules to guide international trade and investment.

Procedures And Conditions Under Which Controls Are Imposed

While some have suggested that the President be denied the option of export controls as a foreign policy tool, this may be too drastic a step to be taken. However, ECAT members see the need for the establishment of specific procedures to be followed by the Executive before foreign policy export controls can be imposed.

Specifically, ECAT believes that the Executive should be required to notify the Congress of his intention to impose foreign policy export controls not less than forty-five (45) days before the day on which he would impose them as well as to provide an opportunity for any interested party to comment with respect to the proposed controls during the 45-day period. There is no such requirement in the current statute.

ECAT recognizes, however, that this procedure should not restrict the ability of the President to impose foreign policy controls in order to fulfill obligations of the United States pursuant to treaties or other international agreements to which the United States is a party.

Furthermore, we recommend that additional conditions would have to be met before the President could impose, expand, or extend unilateral foreign policy export controls. If the recommended conditions cannot be met, the presumption is that the President should not impose the controls. This contrasts with the current statute in which the criteria set out for imposition of foreign policy export controls are only to be considered by the President.

ECAT's recommendations would require the President to determine that:

--reasonable efforts have been made to achieve the purposes of the controls through negotiations or other alternative means;

--the proposed controls are compatible with the foreign policy objectives of the United States and with overall United States policy toward the country which is the proposed target of controls;

--the reaction of other countries to the imposition or expansion of such export controls by the United States has been taken into account;

--such controls are likely to achieve the intended foreign policy purpose;

--like goods or technology or directly competitive goods or technology are not available from uncontrolled sources;

--all feasible steps have been taken to initiate and conclude negotiations with appropriate foreign governments for the purpose of securing their cooperation in imposing the same controls as those proposed by the United States;

--evaluations must be made as to the likely effects, including economic impacts, of the proposed controls on the export performance of the United States, on the competitive position of the United States in the international economy, on the international reputation of the United States as a supplier of goods and technologies, and on individual United States companies and their employees and communities; and

--the foreign policy consequences of imposing or not imposing such controls have been evaluated.

In a report to Congress, the President should be required to report in detail how these conditions have been met. His report should also respond to comments received from interested parties on the proposed controls.

Foreign Availability

The foreign availability provision in the statute has been narrowly interpreted by the Executive. Goods and technologies made subject to controls have been determined not to be available abroad because the foreign goods and technologies are not precisely "comparable." ECAT believes that the concept of foreign availability needs to be clarified to indicate that comparability covers not only like goods and technologies but also "directly competitive" goods and technologies. This clarification, together with requiring a Presidential determination on foreign availability, should better realize Congressional intent that foreign policy export controls not be imposed when the result will simply be to abdicate business to U.S. foreign competitors.

Extraterritorial Application

ECAT members believe that foreign policy controls should not have extraterritorial application, i.e., they should not apply to U.S. foreign subsidiaries, branches, or licensees.

In the case of multilateral controls, activities of these U.S. foreign subsidiaries, branches, and licensees would be controlled by the governments of the countries in which they are located. ECAT members think this is appropriate.

Sanctity of Contract

Foreign policy export controls imposed by the United States should be made compatible with the internationally recognized concept of the sanctity of contracts, a concept important to the long-term commercial and security interests of the United States. The Act should be amended to allow only the prospective application of foreign policy export controls.

We specifically recommend that foreign policy controls should not be imposed on goods or technologies which are exported from the United States to a given country in performance of a binding contract when that contract was entered into before, or under an export license issued before, the date on which the Executive notifies the Congress of his intention to impose controls on exports to that country.

Exclusion For Medicines and Medical Supplies

ECAT supports the exclusion currently in the statute that foreign policy controls not be imposed on the export of goods or technologies required to meet basic human needs abroad.

Expiry of Export Controls

The current statute provides for the expiry of unilaterally imposed foreign policy controls one year after their imposition. ECAT believes that more frequent and careful review of foreign policy export controls is necessary. This can be achieved by establishing that (a) such controls expire six months after the date on which they are imposed and (b) their extension or expansion requires the Executive to recomply with the conditions met at the time of their original imposition.

IMPLEMENTATION OF THE EAA

ECAT is of the view that day-to-day implementation of export controls needs to be improved. Implementation requires greater clarity and consistency.

Administrative Rulings

One feasible way for obtaining improvements in the Department of Commerce's administration of the EAA would be for the Department to publish export control rulings analogous to the rulings published by the Department of the Treasury in the tax area. A ruling on a proposed export transaction would be issued by the Department of Commerce at the request of an exporter and would be required to be issued by the Department in a timely fashion. The ruling would provide a definitive interpretation of applicable law and would bind the Secretary of Commerce with respect to the transaction in question as well as to identical subsequent transactions.

Resources

The resources available to the Department of Commerce in the area of export controls need to be strengthened. ECAT sees a need for improvement in Commerce Department personnel working in the export control area as regards their general level of expertise and their professional training.

Independent Agency

ECAT members are opposed to a proposal for the establishment of an Office of Strategic Trade that would have transferred to it the export control staff and export control functions of the Commerce Department together with similar transfers from the Defense Department and other interested agencies. There is a great concern that such a reorganization by removing or diluting the business perspective that the Commerce Department brings to its deliberations on export control matters could result in inappropriate control of U.S. exports.

New Licenses

ECAT supports the development of new forms of licenses covering numerous export transactions of militarily critical technologies and equipment to CoCom countries. One form of license might be based on defined relationships among specific parties, e.g., transfers between parent companies and subsidiaries.

Judicial Review

ECAT members are concerned that the conditions and procedures for imposition of foreign policy export controls be consistently followed by the Executive. Their experience with the EAA suggests that the criteria and procedures for foreign policy export controls which are currently in the Act have been breached in their spirit and their letter by the Executive. Accordingly, ECAT supports the addition of a judicial review provision to help ensure that EAA conditions and procedures be followed precisely.

The provision would provide for judicial review in those situations in which (1) an interested party believes that an action required to be taken under the Act has not been taken and (2) a person believes that a civil penalty or an administrative action is unsupported by substantial evidence on the record or is not otherwise in accordance with law.

Senator HEINZ. Thank you, Mr. McQuade, and I guess it's fair to say that you have a more extensive statement which you summarized. All statements by unanimous consent will be a part of the record in full.

Mr. McQUADE. We appreciate that.

Senator HEINZ. Mr. Chapman.

STATEMENT OF ERSKINE C. CHAPMAN, REPRESENTING THE BUSINESS ROUNDTABLE; EXECUTIVE VICE PRESIDENT, CATERPILLAR TRACTOR CO.

Mr. CHAPMAN. Mr. Chairman, my name is Erskine C. Chapman and I am executive vice president of the Caterpillar Tractor Co. I appear today, however, as a spokesman for the Business Roundtable.

[Complete statement follows:]

STATEMENT OF ERSKINE C. CHAPMAN, CATERPILLAR TRACTOR CO.

Mr. Chairman. My name is Erskine C. Chapman and I am executive vice president of Caterpillar Tractor Co. I am pleased to appear before the Subcommittee on International Finance and Monetary Policy to comment on the Export Administration Act and specifically on the use of foreign policy controls.

I appear today as a spokesman for the Business Roundtable. Charles S. Levy, counsel for the Roundtable's Task Force on International Trade and Investment is accompanying me.

A complete discussion of the Business Roundtable's views and legislative recommendations concerning not only foreign policy controls, but also national security controls and administrative action as well, has been provided to the subcommittee. I hope the committee will carefully consider the contents of this document. With your concurrence, I would request that the entire statement be included in the hearing record.

Mr. Chairman, U.S. international economic policies historically have sought to expand international trade and investment. They have been generally successful. Yet our share of world exports has been declining sharply. The decline is in part due to U.S. export control policies which brand American businesses as unreliable suppliers, investors, and licensors.

This, in our view, is contrary to the intent of Congress. In passing the Export Administration Act of 1979, Congress expressed its desire to "emphasize the importance of exports to the U.S. economy and confine use of export control authority to instances where controls are essential."

Unfortunately that intent has often been ignored. The use of foreign policy controls is actually expanding. In the recent past, foreign policy controls have been applied to exports ranging from pipelayers for the Siberian pipeline to stuffed animals for the Moscow Olympics. The result has generally been to damage U.S. commercial interests with little or no impact on the target country.

Virtually all products manufactured by American companies—even those involving sophisticated technology—are available from many foreign competitors. Yet other countries do not usually support major U.S. foreign policy control sanctions. Thus, unilateral controls imposed by the United States succeed only in diverting important export business to major U.S. competitors.

For U.S. exporters, lost sales translate into reduced production, profits, and reinvestment; for the employees of these firms, they mean reduced wages or increased unemployment. For government at all levels—Federal, State, and local—lost sales mean a loss of tax revenue and increased unemployment and social costs.

U.S. international political relationships and the rules governing international trade and investment are also adversely affected by the unilateral application of foreign policy export controls. The extraterritorial application of U.S. Law to prevent the reexport of U.S. products by unrelated foreign companies, and even the export of foreign-made products by overseas subsidiaries or licensees of U.S. companies, has created resentment in foreign capitals.

As experienced during past and present administrations, the ineffectiveness of foreign policy controls, the harm they cause American economic interests and the availability of alternative courses of action argue strongly for appropriate safeguards to prevent the excessive and arbitrary use of foreign policy export controls.

In spite of clear congressional intent, existing procedures and limitations have proven to be inadequate. As a result, we propose that the following recommendations be reflected in the Export Administration Act when it is amended in 1983. Their adoption will, in our view, refocus attention on the importance of exports to our economy, while maintaining the President's flexibility in the conduct of foreign policy.

Recommendation 1

The Export Administration Act should require that certain procedures be followed with respect to the imposition of export controls for foreign policy purposes:

(a) Prior to imposing or extending export controls, the President must publish his intention to do so in the Federal Register.

(b) The executive branch must consult with Congress, hold public hearings, consider written comments and submit to the Congress a comprehensive report setting forth specific findings with respect to each of the criteria contained in the act, before imposing controls.

(c) If the President determines that the national interest requires immediate imposition of foreign policy export controls, he may postpone the consultations, hearings, and comment period for thirty (30) days.

If these emergency procedures are invoked, the President must nevertheless submit to Congress a preliminary report and within forty-five (45) days, must submit to Congress a comprehensive report.

(d) All export controls imposed for foreign policy purposes expire after 180 days. If the President wishes to extend the controls beyond that time, he must again initiate the procedures I've outlined.

If the President fails to follow any one of these procedures, the controls would be void and unenforceable.

The procedures stipulate that, even in crisis, it is vital that the President consider the likely effectiveness of the controls he intends to impose and the available alternatives that may be more effective and less costly. These factors must be addressed in the preliminary report to Congress.

After 180 days, the actual effectiveness and domestic economic impact of the controls can be adequately assessed. Moreover, the original foreign policy justification for imposing the controls may need reconsideration. Therefore, the President is required to follow the same procedures as when he initially imposed the controls.

Recommendation 2

The existing criteria for imposing foreign policy controls should be strengthened, requiring a more compelling showing of need, effectiveness, and foreign unavailability. In addition, the criteria should include limitations on the unilateral imposition of foreign policy controls.

As presently drafted, the criteria for imposing foreign policy export controls are disproportionately weak in comparison with the political and economic costs they inflict. In particular, the issue of the likely effectiveness of the controls is not adequately defined.

The key to the effectiveness of controls is foreign availability. Only multilateral controls broad enough to prevent the target country from obtaining sufficient quantities of the controlled goods or technology should be authorized.

Other factors, such as the importance of the controlled product to the target country's economy and the importance of the offending policy or conduct to the target country's ideology, will also affect the likelihood that export controls will be politically effective and should be taken into consideration as well.

Recommendation 3

Export controls for foreign policy purposes should not have retroactive application.

(a) With respect to exports requiring validated licenses, once the license is issued, it should not be subject to repeal or any further restriction.

(b) With respect to exports that fall within general licenses, new restrictions or license requirements would not affect existing contracts.

The retroactive application of foreign policy export controls brands American firms as unreliable suppliers in the eyes of our trading partners. If the changing winds of American policy can nullify valid contracts, foreign purchasers will look to suppliers located elsewhere.

Inclusion of a "sanctity of contract" provision in the Export Administration Act is the only truly effective way to restore the reputation of U.S. exporters as reliable suppliers.

Recommendation 4

Export controls for foreign policy purposes should not apply to foreign nationals, including foreign subsidiaries and licensees of U.S. corporations.

In June 1982, the United States sought to prohibit the export of foreign-made products of overseas subsidiaries or licensees of U.S. companies and the reexport of U.S. products by completely unrelated foreign companies.

Our allies and trading partners were outraged at such an extraterritorial extension of U.S. jurisdiction. Several countries, notably Great Britain and France, invoked their own laws to compel companies doing business within their territories to honor existing contracts, even if to do so would violate the U.S. regulations. Foreign subsidiaries and licensees of U.S. companies were placed in an untenable position between the conflicting demands of sovereign governments.

The United States cannot afford to utilize a tactic that strains both diplomatic and economic relations with our allies, while imposing its principal economic costs not on our adversaries, but on ourselves.

Mr. Chairman, I hope these recommendations will be of value in the course of your review of the Export Administration Act. As I indicated earlier they are substantially elaborated in the supplemental statement we have provided the committee.

We believe there is a compelling need to return a degree of consistency and predictability to the Export Administration process. We are committed to cooperating with you to develop workable solutions to the difficult problems you are confronting.

Thank you.

Senator HEINZ. Thank you very much, Mr. Chapman.

[Response to written questions of Senator Heinz follows:]

CATERPILLAR TRACTOR CO.

Executive Vice President

Peoria, Illinois 61629

April 7, 1983

The Honorable John Heinz
United States Senate
443 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Heinz:

I would like to thank you for allowing me the opportunity to testify before your subcommittee on behalf of the Business Roundtable. I especially appreciated your interest and active participation in the hearing.

During the course of the hearing you asked two questions which I would like to respond to in greater detail. The first dealt with the important issue of "foreign availability." The second concerned the issue of whether the President should have authority to impose import controls in conjunction with the imposition of export controls for foreign policy reasons.

First, the key to the effectiveness of export controls is foreign availability. The Export Administration Act of 1979 has a foreign availability provision. Unfortunately, it has too often been ignored by the Executive Branch. And when the provision has been applied, it has been narrowly interpreted. Goods and technology subject to controls have been determined not to be available from foreign uncontrolled sources because the foreign goods and technology were not precisely "comparable." Failure to take into account foreign availability has clearly and unproductively diverted export sales from U.S. companies to our foreign competitors.

Caterpillar Tractor Co.'s attempt to sell pipelayers to the Soviet Union is a case in point. Japanese pipelayers were "comparable in quality" to ours and as the record shows "were available without restriction from sources outside the United States in significant quantities." Yet, Caterpillar was prevented from selling pipelayers to the Soviet Union. The Japanese pipelayer supplier, Komatsu, had a field day and continues to capture an even larger share of a market which we once dominated. Just recently, Komatsu sold $200 million in pipelayers to the Soviet Union. Caterpillar was not even asked to bid on the contract.

At one time, this Japanese firm was our only major foreign competitor with respect to pipelayers. However, because our reliability as a supplier has been eroded by the proliferation of foreign policy controls, we now have to contend with German and Italian companies as well.

In S. 397 you have emphasized the importance of foreign availability in the export control decision-making process. The Business Roundtable and Caterpillar Tractor Co. believe this is a positive provision.

In making a determination of foreign availability under your legislation, the Secretary of Commerce would be required to accept the representations of applicants for a license unless the representations were contradicted by "reliable evidence."

There is no doubt that we must strengthen the foreign availability standard and in light of the Executive Branch's failure to consider adequately the issue of foreign availability, the presumption in S. 397 may be a viable approach.

Second, with regard to import controls, the Business Roundtable and Caterpillar Tractor Co. oppose their use as an economic weapon against target countries and as an enforcement tool against our trading partners.

Import controls are imposed to protect domestic industries from unfair trade action, such as unfairly priced or subsidized imports. The addition of political criteria to existing economic justifications for import controls is likely to lead to an escalation of protectionist pressures.

Reform of the Export Administration Act is necessary to reduce government interference in the international marketplace. The addition of import controls as a foreign policy or enforcement weapon will only increase government intervention without any significant benefits.

Once again, thank you for the opportunity to testify before your subcommittee. We look forward to working with you and your office as you proceed with your deliberations.

Sincerely,

E C Chapman

ECChapman
mf

Mr. O'Keefe.

STATEMENT OF BERNARD J. O'KEEFE, REPRESENTING THE NATIONAL ASSOCIATION OF MANUFACTURERS, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, EG&G, INC.

Mr. O'KEEFE. Mr. Chairman, Senator Dixon, I am Bernard J. O'Keefe, chairman and chief executive officer of EG&G, Inc., a so-called high technology company. Today I'm representing the National Association of Manufacturers. We have submitted to the committee detailed comments and recommendations on the extension of this act and I have read the preliminary testimony of many of my associates. To a large degree, we are in complete accord. We are in accord with your excellent piece of legislation, S. 397, particularly with respect to sanctity of contracts, foreign availability, import controls. I think probably if we differ at all, it would be a stronger position on the elimination of section 6 as delineated in a letter from our president, Mr. Trowbridge, to Secretary Baldrige.

FEAR OF OVERREGULATION

With respect to Senator Garn's bill, S. 434, we are opposed to that bill. In summary, we believe it will lead to overregulation which I will comment in a moment.

With respect to Senator Nunn's bill, we don't have a strong position on that particular piece of legislation.

Rather than repeat some of the things that my colleagues will be saying, I would like to take a minute if I might to speak to the broader issue in relation to some of the other things that are going on in our economy and in the national security.

There has been no dearth of poor statistics and bad numbers coming out of the experience of the year 1982. To me, the most alarming one was the record balance of trade deficit of $42.6 billion and the change in the manufacturing trade deficit from a positive $12 billion to a negative $4 billion, all in the course of 1 year.

Now in the year 1983, no matter what we do with this legislation or any other legislation, the Commerce Department predicts—and they're usually low on such matters—that the balance of trade deficit will increase by 50 percent to an alarming $66 billion, and there's no indication that this situation will not continue to deteriorate into 1984.

Now you can pick whatever job number you want—30,000 jobs per billion up to 50,000 jobs, but if you take the more conservative number, we are already exporting a million and a quarter jobs from the United States of America by this balance of trade deficit. If you take the 1983 figures, an extra $20-some-odd billion, we'll export effectively 600,000 more jobs from this country. It's very difficult for me to see how we can sustain an economic recovery in the face of that potential large increase in unemployment.

Now I'm here representing the National Association of Manufacturers, in a sense my own company, and in a sense the captains of industry; but I think we have a broader responsibility. It is a function of industry to provide jobs as well as sales and profits. We're the most efficient provider; otherwise, we would be in an agrarian economy; and the issue for us is not sales and earnings. The issue is jobs—people out of work.

Now it's deeply imbued in Article I of the Constitution of the United States that the Congress has the responsibility to regulate commerce, and you know that as well or better than I do. The proposed extensions of this legislation to me and to our organization represent an overdelegation of those powers and to some an abrogation of those responsibilities.

IMPACT OF OVERDELEGATION OF POWERS

Now you've seen what this overdelegation has done so far. You have the record of the violations of sanctity of contract. You have insufficient consideration of foreign availability. You have the imposition of unilateral controls without consultation with Cocom who are our partners. You have the lack of consideration of import controls.

All of those have been done under the aegis of responsible administration. We have, of course, the issue of the grain embargo which had the marvelous result of giving Argentina enough money to go fight themselves a war. Now I don't think that is helping national security. We have the pipeline embargo which I think was not only improper for the American economy; it was not only embarrassing to the American economy, but in my association with my foreign associates, to me it was humiliating.

Now the extension of these powers to an administration gives to a regulator something which the lawyers call an attractive nuisance I think. It's the tendency to say no. Now a regulator has an automatic tendency to say no. If he says yes and he's wrong, he gets in trouble. If he says no and he's wrong, no one ever places it to his action. So I think it's improper to give that person a degree of responsibility that should not be delegated to him.

Now I haven't found in my investigation a single case where denial of export licenses or all those things that have been done have either helped our national security or helped our economy, and we can point to case after case after case amounting to billions and billions of dollars where we have been denied business and we have been denied sales and we have lost hundreds of thousands of jobs.

Now there are appeals made to the national security, and as far as I'm concerned, as far as most of us are concerned, the most important thing to national security is a sound domestic economy, and those things which we do outside the economy must come from the surplus of that economy, whether it's national security or entitlements or welfare or what have you.

We are faced with the enormous problem—the Senate is faced with the problem today—on the jobs bill. Here is a case where we are losing jobs. The whole Congress and the whole country is faced with the problem of an enormous deficit of $200 billion which says that there is no surplus from the American economy to fund defense, entitlements and all the other things we're trying to fund. And to the extent that extension of this act overdelegates authority and abrogates responsibility, I believe it is deleterious both to our economy and to the national security. Thank you.

[Complete statement follows.]

STATEMENT OF
BERNARD J. O'KEEFE
ON
REAUTHORIZATION OF THE EXPORT ADMINISTRATION ACT
BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY
OF THE
SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
MARCH 16, 1983

Mr. Chairman, members of the committee, I am Bernard J. O'Keefe, Chairman of E G & G Corporation of Wellesley, Massachusetts. I am here today in my capacity as Chairman of the National Association of Manufacturers. I am very pleased to have this opportunity to explain the views of American manufacturers on the extremely important issue now before this committee, namely the reauthorization of the Export Administration Act.

In our view, experience with the current act strongly suggests that it has not worked well in important areas. We appreciate that this subcommittee must concern itself with the full sweep of the Export Administration Act and the numerous policy questions it addresses and further that you have already held hearings on those provisions of the Export Administration Act dealing with national security controls. My comments, accordingly, are primarily concerned with industry's views on foreign policy controls. Later in my testimony I would like to draw the subcommittee's attention to principles that we feel should guide the exercise of national security controls as well.

At the outset I should like to discuss certain aspects of the foreign policy controls provided for in Section 6 of the current Export Administration Act. The need for government to control the export of products and technology that could enhance the military capability of would-be adversaries and so threaten the security of the United States is beyond question. On the other hand, the degree to which law should encourage the use of export controls where the national security is not at stake is a very different issue.

The conduct of foreign policy is, in the first instance, the responsibility of the President. It is more than understandable that he should seek the broadest array of instruments with which to conduct that policy, including the ability to control U.S. exports. Inevitably, the exercise of this type of power affects American competitiveness abroad and ultimately the strength of the U.S. industrial base and our domestic economy. For these reasons, NAM feels strongly that that the export of non-strategic products should be controlled only in extraordinary circumstances.

If that judgement is a reflection of how we think competing views on foreign policy and trade policy should be harmonized -- and it is -- it is founded in significant part on an assessment of America's relative strength as an international trader.

U.S. Industrial Competitiveness

Prior to World War II, the United States had no comprehensive export policy. Poor communications, difficult transportation and the large size of the homogeneous domestic market led to a fortress America concept in which trade played a relatively minor part. During the war American industry fabricated the mightiest military machine the world had ever seen. In the fifties and sixties, we played an enormous part in rebuilding Western Europe and Japan. There was no need then for an export policy. We could sell everything we could make. It was free rum and no police.

With our trading partners, things were very different. They needed imports to rebuild and they needed exports to pay for them. Each of them -- Japan, West Germany, France and Great Britain -- built up sophisticated export policies indeed. All the while we sat back and took orders. In the past twenty years, the world has changed dramatically and that happy situation no longer exists for the U.S.

A recently released NAM report U.S. Trade: Record of the 1970s--Challenge of the 1980s concludes that, "By the 1970s, the United States had lost the economic edge which it had held over the rest of the world since 1945." The 1982 trade deficit of $42.6 billion is astounding, especially in view of the fact that it occurred in a recession with falling oil prices. Yet even this record breaking deficit is likely to be exceeded by a large margin in 1983.

The trend in manufacturing trade is no more encouraging. In almost every year of the past decade both Germany and Japan have increased their net foreign earnings from exports of manufactured goods. In contrast, this sector of the U.S. trade account has wandered in and out of deficit. For example, we had a $12 billion surplus in our manufactured goods trade in 1981 and a 1982 deficit of $4 billion.

Taking the analysis one step further, the NAM study I referred to points out that in the decade of the 1970s the United States suffered relative declines in competitiveness even in areas commonly regarded as American strengths: capital goods and high technology.

It is clear to most observers that these trends need to be reversed. It should be equally clear that protectionism is even less of an option today than it was in the 1930s. Modern information technology has begun to revolutionize the character of industry. Our concepts are barely keeping pace. This new technology makes communication from the supermarket shelf or the distributor's supply line to the raw material supplier as rapid as the cost-benefit tradeoffs require. A dozen years ago, for example, computers were all made in one place. Now, it is not uncommon to produce chips in the United States and Japan, subassemblies in Taiwan, housings in India and final assemblies in South Korea. This development is largely due to the ability of the new CAD-CAM (Computer-Aided Design and Computer-Aided Manufacturing) techniques to specify designs so precisely that products can be produced to fit together by workers in many different countries.

It is well known that trade is a more important component of the national economy that it was only a short while ago. Both imports and exports have nearly doubled as a percent of total manufacturing production since 1972. In 1981 they were respectively 21 percent and 23 percent. These structural changes show these numbers to be a reflection of an irreversible trend toward ever greater interdependence in the world economy. A lesson to be drawn from our erratic trade performance in manufactured goods and flagging competitiveness in high technology is that most of what we make others make too. Most of the markets of the world are buyers' markets.

In such a world, it would be folly to regard our country's exports as favors to be withdrawn when we wish to signal displeasure with other nations. Yet this is precisely what recent administrations have done. On January 11, President Reagan acknowledged the danger of this approach in signing into law the Futures Trading Act of 1982. He did so, however, only with respect to agriculture. The National Association of Manufacturers feels strongly that the considerations which led the President to approve this legislation for ensuring the reliability of U.S. agricultural exports should apply equally to manufactured exports. We believe that the 20 million people who work in American industry should be given the same consideration as America's 3 million farmers.

The so-called pipeline sanctions of December 29, 1981 and June 22, 1982 represent our most recent, dramatic experience with foreign policy export controls. They have certainly served to highlight the cost of such controls in terms of:

- the reputation of U.S. manufacturers as reliable suppliers;
- the stability of the relationships between American exporters and their foreign subsidiaries; and
- advantages to foreign competitors.

I should like to discuss each of these separately.

Reliability of U.S. Companies as Suppliers

Export contracts and license agreements of U.S. manufacturers often involve commitments for the delivery of goods and technology years in advance. The ability of U.S. firms to enter into and fulfill long-term contracts is critical to U.S. international competitiveness. This is especially true in the area of capital goods exports, which provided the United States with a $46 billion surplus in our 1981 trade account.

Some of the "zigs and zags" of U.S. foreign policy controls for various export transactions are documented in Table 1. The damage these policies do to the reputations of U.S. manufacturers and their ability to be regarded as reliable suppliers is their most harmful effect. Business concerns on this point have been accurately summarized in an often quoted article by

TABLE I: EXAMPLES OF U.S. TRADE BEING TURNED "ON AND OFF" UNDER U.S. EXPORT CONTROL LAWS

DRESSER DRILL-BIT PLANT SALE TO U.S.S.R	SATELLITE COMMUNICATIONS SALE TO ARAB COUNTRIES (ARABSAT)	CATERPILLAR PIPELINE SALE TO U.S.S.R.	LOCKHEED L-1011 SALE TO IRAQ	ARMCO STEEL PLANT SALE TO U.S.S.R.
Aug. 9, 1978: The Department of Commerce approves license for Dresser to build $150 million drill-bit plant in USSR. Aug. 25, 1978: A special panel of administration officials reviews this transaction. Aug. 30, 1978: President Carter's senior advisers vote by a 3-to-2 margin to halt the transaction. Sept. 6, 1978: The President decides to allow the sale. Jan. 4, 1980: As a result of oil and gas pipeline controls invoked in connection with Soviet invasion of Afghanistan, Dresser's license is revoked	Oct. 30, 1981: State Department, as required in the Arms Export Control Act, notifies Congress of sale of satellite equipment to Arabsat. Nov. 4, 1981: U.S. license rescinded following Congressional criticism February 1982: Proposed sale notification resubmitted with non-recognition of PLO and other assurances made.	July 1981: Reagan administration approves license to sell 100 pipelayers to the USSR. Sept. 1981: Caterpillar applies for license to ship an additional 200 pipelayers to the Soviet Union for non-Yamal pipeline projects. Dec. 8, 1981: Reagan administration approves license. Dec. 29, 1981: As export license had not been formally issued by Commerce Department, export controls on oil and pipeline equipment to the USSR imposed by Reagan in response to Polish situation leads to suspension of license's issuance Nov. 13, 1982: With lifting of December & June 1982 pipeline-related sanctions, Caterpillar's license is to be reviewed again.	April 6, 1982: Lockheed applies to export six L-1011s to Iraq. April 14, 1982: Administration approves license for sale of these planes to Iraqi Airways, a transaction worth $130 million. April 29, 1982: Letters opposing the sale are sent to President Reagan by the House and Senate. April 30, 1982: Administration delays issuance of license. May 25, 1982: License is issued. September 1982: License is modified and approved.	1976-1979: Armco and Nippon Steel (Japan) work together to obtain a contract from the USSR for sale of equipment for a Soviet electrical steel plant. Early December, 1979: Export licenses for Armco are approved. Dec. 17, 1979: Contract is signed between the U.S., Japan and USSR. Jan. 11, 1980: Armco's license is suspended as a result of Afghanistan-related sanctions against the USSR. April, 1980: The USSR terminates the contract, and Nippon Steel and Crevsot Loire of France undertake joint project with the USSR.

SOURCE: International Trade Reporter's U.S. Export Weekly,
The Bureau of National Affairs Inc., Washington, D.C.

Secretary of State, George P. Shultz, written while he was President of the Bechtel Corporation. Mr. Shultz wrote:

> It takes a long time to go abroad, get positioned and learn about how to do things. A considerable investment is made on both sides of the transaction,.... In this process the company develops what the government may regard as a bargaining chip. But if our government then takes the bargaining chip and spends it, where does that leave the company? The company has lost out and its commercial relationship deteriorates.

In short, export controls are not just a short-term inconvenience for U.S. business. They have implications for U.S. competitiveness far into the future. It would be easier to explain the cost of such controls if we could put a number to it. Preliminary results of a survey NAM is conducting suggest it is very high, that some $1.5 billion in sales have been lost as a result of export controls in the past four years. And that estimate is based on reports from only ten companies. Some of the comments made by those questioned in this survey indicate the nature of the problems caused by our control policies:

- Trade embargo on high technology products for Russia essentially destroyed our Russian business which probably amounted to $20-25 million annually.
- Since lifting of "pipeline" controls, most of the requests to quote specify German, Japanese or Austrian equipment.
- As a result of the recent USSR "pipeline" controls, we experienced a significant loss of business involving valves for oil drilling and extraction, drilling equipment, and solids controls equipment.

The fact that the discontinued grain embargo cost American suppliers 45 percent of the Soviet market is well known. Similarly U.S. manufacturers affected by pipeline sanctions will experience competitive disadvantages because of it for the foreseeable future, as will others. This point was brought home again a few weeks ago when the British Export Credits Guarantee Department (ECGD) announced it would no longer insure losses on sales to the Soviet Union arising from action by the U.S. Government. We have been told that this decision was taken on commercial grounds, that ECGD could not afford the risk. In any event, it seems to us far more likely that this decision will result in British companies turning away from American suppliers than in cutbacks in East-West trade.

Because of all-but-unquantifiable factors like these, it would be a mistake to put too much emphasis on a numerical expression for the cost of export controls. How can we measure, for example, the impact and costs of a telegram sent by the Government of Kuwait to other Arab nations urging them not to purchase American commercial aircraft as a protest against U.S. policies toward the Arab world, exemplified in part by U.S. embargoes against various Arab nations? We cannot, but we can safely assume that the direct and indirect costs of these controls is very significant.

Impact of Controls on Foreign Subsidiaries of U.S. Firms

In addition to raising questions about the reliability of U.S. manufacturers, foreign policy controls when applied extraterritorially affect the ability of foreign subsidiaries of U.S. firms to operate in accordance with the laws and policies of the nations in which they are incorporated. Ultimately, this has to affect the value of these foreign subsidiaries to the U.S. parent.

The U.S. government, through the Export Administration Act, asserts certain extraterritorial powers over foreign subsidiaries of U.S. firms. Presidential authority in this instance derives from an amendment to the Export Administration Act which was taken from the 1977 International Emergency Economic Powers Act. The language contained in the amendment is very broad, providing "authority for control over exports of non-origin U.S. goods and technology by foreign subsidiaries of U.S. concerns."

The legislative history of this amendment reveals more than a little confusion over what powers members of Congress thought they were granting the President. The principal House sponsor of the amendment stated it was intended to ensure that the President had authority to maintain existing controls on foreign subsidiaries of U.S. companies. In 1977, such controls were limited to exports to embargoed nations and exports of strategic goods to Communist nations.

The Senate Banking Committee, in passing the 1979 Export Administration Act, considered this matter and decided not to take any action to limit Presidential power "pending further study of the issue." The Committee noted that the possible application of U.S. foreign policy controls to foreign subsidiaries of U.S. companies in "non-emergency situations may not have been considered adequately by the Congress at the time the provision was adopted."

As a practical matter, U.S. authority in this area is limited by the degree to which other governments will tolerate U.S. foreign policy controls on companies operating within their national boundaries. This was a lesson that we should have learned in the 1965 Fruehauf case when the U.S. government directed the Fruehauf Company not to allow its French subsidiary to proceed with a sale of truck bodies to China. The impasse over this extraterritorial extension of U.S. control policy was broken only after the French courts placed the Fruehauf subsidiary in receivership. China got the truck bodies.

Other major industrial nations have acquiesced--with more than a little reluctance--to the extraterritorial nature of U.S. reexport controls for national security reasons. Their own export control laws after all are based on national security criteria. But the U.S. is the only country with an extensive set of foreign policy controls. If the recent pipeline controversy demonstrated nothing else, it showed that the Europeans were not going to acquiesce to the extraterritorial extension of U.S.

foreign policy controls. The efforts by each side to press its claims to the fullest in the pipeline dispute obviously left the foreign subsidiaries of U.S. firms in an impossible situation--caught between competing national laws and regulations. This is hardly a prescription for enhancing U.S. international competitiveness.

Boost to Foreign Competition

The repercussions of U.S. foreign policy controls are especially disturbing in light of the foreign availability of so many of the products covered by U.S. control regulations in this area. Market positions are established by U.S. manufacturers often with great difficulty and expense. Foreign competitors are reluctant to take on U.S. companies with established market positions because of the initial startup costs and time involved with such a challenge. When the U.S. government unilaterally takes U.S. companies out of a market, foreign competitors quickly fill the vacuum with their products, while ours are denied.

Ironically the temptation to impose controls unilaterally is greatest when U.S. industry has a competitive advantage in a market or product. The result is that U.S. controls give foreign competitors "captured" markets that they can use to build up economies of scale and test new technology. This is what happened with respect to foreign competition in large diameter pipes, submersible pumps, and U.S. drilling bits; it is what is likely to happen with large scale turbines and other oil and gas equipment and technology.

The basic point that must be realized here is that foreign competitors of U.S. firms operate under a very different set of control policies than U.S. manufacturers. This is extremely well illustrated in a new report by the Ad Hoc Working Committee on Export Controls of the President's Export Council. Among the findings of this Ad Hoc Working Committee were the following:

1) The United States attempts to achieve foreign policy objectives with export controls. Other countries do not.

2) Japan, France and the U.K. do not require export licenses for many countries. Canada is the only country so treated by the United States.

3) The United States controls technical data to free world destinations. Only Japan and Germany do anything only for truly strategic commodities.

4) Only the United States asserts sweeping extraterritoriality in its regulations. Others have nothing comparable.

5) Only the United States has a denial list.

6) Absent a declared national emergency, only the United States applies controls retroactively, impacting contractual commitments.

The differential burdens on U.S. companies and others cited in the report add up to a significant handicap for U.S. exporters competing in international markets.

Foreign Policy Controls

In our view it is unlikely that any general grant of trade powers, such as those contained in Section 6 of the current Export Administration Act, can meet the difficult test of balancing future foreign policy objectives against the significant costs to U.S. trade interests that the exercise of those powers inevitably entails. We believe, therefore, that repeal of this section represents the wisest course. NAM's President Alexander Trowbridge made this point in a letter to Secretary Baldrige earlier this year. A copy of this letter is attached.

The first point that needs to be made about this suggestion is that it would not tie the President's hands in an emergency. Even without Section 6 of the Export Administration Act, the President would have available to him the more sweeping economic sanctions of the International Emergency Economic Powers Act.

Second, the President can always ask Congress for specific additional authority in the area of international economic policy if, in a situation other than an emergency, he wishes to exercise powers similar to those now granted to him under the Export Administration Act. Alternatively Congress is always free to act on its own as it did in 1978 against Uganda.

Third, though I have spoken of repeal, NAM is not suggesting that Congress should deny the Administration the power to pursue foreign policy objectives identified by the Congress itself, such as combating international terrorism.

A common thread in all of these points is the issue of Congress's role in the use of export controls. It is worth observing that the question of repeal of Section 6 is not so much a matter of what power the government shall have, but of which branch of government shall control it. It is our view that the

Constitution's protection of individual rights is not exclusively related to the bill of rights but is inherent in the structure of government. Article 1 of the Constitution grants to the Congress the power "to regulate commerce with foreign nations", and at least one scholar has suggested that, "The representative branch of government seems the most appropriate locus for a political decision that will impose direct, adverse economic consequences on a particular group of persons in the hope of obtaining less definable benefits for the whole of society."

The issue of Congressional prerogatives was addressed in a slightly different context in the course of the last, 1979, reauthorization of the Export Administration Act. A question was raised as to whether this act gave the President the power to impose total trade embargoes on target countries. On balance it was decided that authority would be too great a delegation of Congressional power.

The House Report on the 1979 Act states that the EAA cannot be used to impose a total trade embargo and that "any future embargoes be imposed only by specific legislative authority" or in emergencies declared "under the general provisions of the International Emergency Economic Powers Act." Congressional reluctance to delegate such powers except in emergencies was explained at the time by a member of the House Foreign Affairs Committee. An embargo "is such an extreme measure," he said, "that it ought to be specifically authorized by the Congress and not imposed by the Administration...."

I cannot emphasize too strongly that the use of export control powers under EAA is also an extreme act. To control export sales to the USSR or to pursue policies that result in Western European firms being placed on export denial lists is as serious as the imposition of a trade embargo against a minor power. If it is important to maintain Congressional authority in the latter case, it is important in the former.

While our preference is for the essential repeal of Section 6, we fully recognize that there are many thoughtful people who are not comfortable with this approach. Indeed some NAM members would rather see Section 6 improved than eliminated, an approach which is recognized in the letter I referred to earlier from NAM President Trowbridge to Commerce Secretary Baldrige. The four principles which NAM has said should guide any restructuring of the foreign policy section of the Export Administration Act are as follows:

1. Existing export licenses and controls must not be cancelled for symbolic short-term objectives.
2. Export controls must not be used when competitive products and technology are available from foreign sources.
3. U.S. control policies should be applied in cooperation with our allies and should not be applied extraterritorially.
4. Close consultation with industry is necessary on any decision to implement controls.

We could perhaps have added a fifth, one which would apply equally to other controls such as national security and short-supply controls:

- The law should specify judicial review and administrative procedures adequate to ensure that whatever mechanism is used to control the export activities of U.S. companies is administered fairly and in keeping with the stated purposes of the controls themselves.

It is against this background that I should like to comment on the legislation before this committee, especially the bill introduced on February 2 by Senator Heinz, S.397. It is this bill that proposes the most significant changes in the foreign policy controls authorized by the Export Administration Act. These are contained in Section 7 of S. 397. Whereas under the current Act, the Administration is required to consider a variety of factors before imposing controls for foreign policy reasons, Senator Heinz's bill would require the President to make a series of determinations. None of these determinations is objectionable from the point of view of the National Association of Manufacturers, and many of them reflect the principles I have listed. If we are bothered by any of these required determinations, it is the one most important to us, contained in the proposed new section 6(b)(5) of the Export Administration Act. Here the President would have to determine that, "The proposed controls will not have an adverse effect on the export performance of the United States, on the competitive position of the United States in the international economy and on individual United States companies and their employees and communities..." It is difficult to imagine a situation in which an honest determination under this section would permit the imposition of controls likely to be useful to the executive. It is almost easier to imagine a future, distraught executive relying on the judgement that a hypocritical determination will not be successfully challenged. Thus, though as businesses we see advantages in this formulation, as members of a society that depends upon respect for law, we see some dangers.

It is not my intention to comment on every provision of S.397, but the following are especially important to NAM.

Foreign Availability. We think it makes sense to honor the exporter's assertion of foreign availability in the absence of evidence to the contrary. I would add that there is always a danger of defining availability too narrowly. In most instances it makes sense to accept that a product is available abroad if foreign manufacturers have the potential to produce it. Surely they will do so if controls on U.S. suppliers make the investment sufficiently attractive.

Import Controls. As I indicated earlier, nations are generally more concerned about markets than sources of supply. And the U.S. market is the largest single market in the world. Therefore, if our object is to reinforce foreign policy objectives with economic sanctions, the logic for resorting first to import controls is compelling. We should bear in mind, however, that in an interdependent world restrictive import policies will hurt U.S. industry almost as surely as embargoes on exports.

Consultations. The consultative requirements of Section 9 of S.397 are welcome. Indeed they reflect one of the principles I mentioned.

COCOM. The desire for closer cooperation among allied governments in controlling exports to potential adversaries is understandable and worthy of praise. We seriously doubt, however, that our COCOM partners are prepared for a more formal arrangement. We, therefore, would not wish to see any such arrangement a precondition for improvements in U.S. export control policy.

Sanctity of contracts. It would be difficult to overstate the problems businesses have when contracts cannot be relied upon or the importance NAM attaches to a provision of this type.

National Security. As for national security controls, NAM strongly supports the basic objective of these controls--namely, to restrict the export of goods or technology which would make a significant contribution to the military potential of our adversaries. We believe, however, that improvements can and should be made in the provisions of the Export Administration Act governing national security controls. Specifically, we believe the following principles should guide the drafting of this portion of the Export Administration Act:

1. U.S. national security controls should be limited to items and related technologies on the Cocom control list.

2. We should work toward arrangements with Cocom countries so that individual validated export licenses are not required for U.S. exports to Cocom or re-exports from Cocom. Comparable bilateral arrangements should be developed with other major trading nations not in Cocom.

3. A new type of export license should be developed--a comprehensive operations license--which would eliminate the need for licenses on each individual transaction of militarily critical items between a U.S. company and its affiliates overseas.

4. We must continue to build on recent efforts to improve the administration of U.S. control regulations. For example, the definitions of products and technology on the Commodity Control List should be clarified by adoption of the nomenclature of the Harmonized Commodity Description and Coding System.

5. Policy decisions and licensing of controls should remain in the Commerce Department. Priority should be given to raising the technical expertise of the Commerce Department staff to ensure more effective policy development and enforcement of control regulations.

Conclusion

Mr. Chairman, in conclusion, I should like to recapitulate very briefly, not the details of the legislation but the fundamental issue. We live in an extremely competitive world. To those of us in industry it is clear that the economic challenges we began to be aware of in the last decade will dominate our national life in the present one. I have talked about the importance of markets, the changing character of industry, and America's reputation as a reliable supplier. I believe the more the economic work of the world is shared among nations, my computer example, the more important it is that we be able to exploit our own strengths unfettered. Finally, if America is to remain the preeminent industrial power, and we must, we cannot afford to be the supplier of last resort.

Thank you, Mr. Chairman.

National Association
of Manufacturers

ALEXANDER B. TROWBRIDGE
President

January 28, 1983

The Honorable Malcolm Baldrige
Secretary of Commerce
United States Department of Commerce
Washington, D.C. 20230

Dear Mr. Secretary:

The National Association of Manufacturers has watched the extension of this country's export controls over the past half dozen years with growing concern. We have expressed this concern on a number of occasions, the most recent being the 1981-82 "pipeline" controls. As we stated at that time, the imposition of controls is more than just a short-term inconvenience for U.S. business; controls have serious long-term implications for U.S. international competitiveness.

The American business community is united in the view that key decisions in the area of export control policy both in this and previous Administrations have seriously harmed U.S. economic interests. I am sure you appreciate that NAM members feel strongly that the same principles which led to the President's approval of legislation to ensure the reliability of U.S. agricultural exports should apply with equal force to U.S. industrial companies trying to compete in international markets. We must not forget that 20 percent of U.S. industrial output is exported each year and that 30 percent of U.S. corporate profits come from international operations. The economic future of this country, in short, is dependent upon the ability of U.S. firms to operate in international markets. The ability of U.S. firms to do so, however, is too often severely limited by a host of disincentives--including U.S. export control policies.

There exists an opportunity to correct this particular disincentive during this year's reauthorization of the Export Administration Act. We endorse the President's statement in his State of the Union address that "regulatory practices and government programs all need constant re-evaluation in terms of our competitiveness." As with agricultural exports, we hope that the Administration will seize this opportunity and use it to signal the world trade community that U.S. firms can be relied upon as suppliers and business partners.

NAM members see a need for changes in both the national security and foreign policy provisions of the Export Administration Act. As far as national security controls are concerned, NAM strongly supports the basic objective of these

1776 F Street, N.W.
Washington, D.C. 20006
(202) 626-3800

controls--namely, to restrict the export of goods or technology which would make a significant contribution to the military potential of our adversaries. We do feel, however, that improvements can and should be made in the provisions of our law governing national security controls. Specifically, we support the following policy positions:

1. U.S. national security controls should be limited to items and related technologies on the Cocom control list.
2. We should work toward arrangements with Cocom countries so that individual validated export licenses are not required for U.S. exports to Cocom or re-exports from Cocom. Comparable bilateral arrangements should be developed with other major trading nations not in Cocom.
3. We must continue to build on recent efforts to improve the administration of U.S. control regulations. For example, the definitions of products and technology on the Commodity Control List should be clarified by adoption of the nomenclature of the Harmonized Commodity Description and Coding System.
4. Policy decisions and licensing of controls should remain in the Commerce Department. Priority should be given to raising the technical expertise of the Commerce Department staff to ensure more effective policy development and enforcement of control regulations.

The quality of U.S. technology available for U.S. defense purposes often depends on the ability of U.S. industry to develop and perfect advanced technology for commercial markets. Cutting our high technology industries off from these markets, therefore, should be done with the utmost caution. The strength of these industries cannot be sustained without access to commercial markets throughout the world.

Turning to the subject of U.S. foreign policy controls, NAM members have discussed two different approaches for dealing with these controls -

(1) Elimination of Presidential authority to apply export controls under Section 6 of the Export Administration Act except pursuant to specific Congressional authorization review.

(2) Revision of the existing provisions of Section 6 to define more clearly the circumstances and conditions for using foreign policy controls.

The first approach--elimination of Section 6 authority to impose foreign policy export controls--is perhaps the simplest way to deal with the problems caused by foreign policy controls. Under this approach, Presidential authority to limit U.S. exports would be removed from the Export Administration Act but still exist under the President's emergency and other powers. Thus he could continue to include export controls in U.S. responses when:

- fulfilling international treaty obligations;
- responding to international emergencies;
- pursuing definite foreign policy objectives authorized by specific legislative grants of authority.

This would bring U.S. control policies into line with those of other major industrial nations. A recent report of the Subcommittee on Export Administration of the President's Export Council notes that:

> National security is the only statutory basis for control in the majority of Cocom countries covered by our study. While a nod is given to foreign policy as possible justification in two instances, it was reported that this reason is almost never used. The U.S., on the other hand, has used it quite frequently in the last two administrations.

It is clear that other trading nations find that the costs of using foreign policy controls outweigh the benefits. It is time that the United States paid more attention to the costs of these controls to our competitive position in critical industrial sectors.

We must recognize the limitations inherent in the unilateral application of not only our national security controls but also our foreign policy controls. The extensive set of unilateral controls we maintain deprive our adversaries of very little. In fact, our export control policies would be far more realistic if they were based upon the assumption that there exist few, if any, manufactured products which other industrial nations are not already producing or have the capability of producing if the appropriate market opportunity arises.

It should not be forgotten that market positions are established by U.S. manufacturers often with great difficulty and expense. Foreign competitors are reluctant to take on U.S. companies with established market positions because of the initial startup costs and time involved with such a challenge. When the U.S. government unilaterally takes our companies out of any particular market, foreign competitors quickly fill the vacuum with their products while ours are denied.

The fact that imposition of export controls is a serious step cannot be emphasized too strongly. Both American security and economic well being depend upon the strength of our industrial base, and industry depends upon markets. The United States, as the leader of the free world and champion of the open trading system, has encouraged both American producers and others to see the world as their market. We have opened our markets to highly competitive industries from the rest of the world. In doing so, we have created a situation in which our industrial strength depends to a significant extent upon our ability to export and that ability is threatened by unilateral export controls which contribute to the perception that U.S. business cannot be relied upon as a supplier or business partner.

Under these circumstances we find that it makes little sense to continue to have sweeping powers under the Export Administration Act to impose unilateral foreign policy controls. Essentially, if an international development is not serious enough to warrant either our allies' cooperation, special action by Congress, or the declaration of an emergency under the International Emergency Economic Powers Act, it probably is not serious enough to justify unilateral control of U.S. exports for foreign policy reasons. We should rely instead on traditional diplomatic or political- military "tools" to register our protests and dissatisfaction.

A second approach to U.S. foreign policy controls which has been discussed by NAM is the revision of Section 6. If Section 6 were to be revised, the following basic principles must be recognized:

1. Existing export licenses and controls must not be cancelled for symbolic short-term objectives.

2. Export controls must not be used when competitive products and technology are available from foreign sources.

3. U.S. control policies shall be applied in cooperation with our allies and shall not be applied extraterritorially.

4. Close consultation with industry is necessary on any decision to implement controls.

These principles should be applied not only to controls under the Export Administration Act, but also to controls imposed under emergency powers or under specific grants of authority by Congress.

If Section 6 is retained, the process by which it is implemented and enforced also needs to be reviewed and refined to:

- require control regulations to be issued first in proposed form;
- establish a technical advisory committee to assess the feasibility and effect of proposed regulations;
- improve administrative procedures and establish judicial review; and,
- establish a specified time beyond which Congress would have to approve continued use of the controls.

On balance, we believe that the first approach--removal of authority to control exports for foreign policy reasons under the Export Administration Act except in the circumstances outlined on page three of this letter--offers the best means to express the determination of the U.S. government to re-establish the credibility of American business as a reliable exporter. The clear-cut nature of such an action would remove a good deal of the existing ambiguity on this point.

I would be most interested in your views on possible approaches to dealing with the issue of U.S. control policies so that we can attain the twin objectives which I think all of us share--namely, control policies which have minimum interference with U.S. international commerce and which achieve definite objectives that further U.S. national interests. I would, of course, be glad to meet with you to discuss this matter in greater detail.

Sincerely,

AB Trowbridge

Alexander B. Trowbridge

cc: Hon. George P. Shultz
Hon. William E. Brock
Hon. Donald T. Regan

Senator HEINZ. Thank you very much, Mr. O'Keefe.
Mr. Downey.

STATEMENT OF ARTHUR T. DOWNEY, REPRESENTING THE CHAMBER OF COMMERCE OF THE UNITED STATES, PARTNER, SUTHERLAND, ASBILL & BRENNAN

Mr. DOWNEY. It is impossible to follow that performance. I applaud everything Mr. O'Keefe says.

Thank you, Mr. Chairman. I am Arthur T. Downey and I appear today as a spokesman for the Chamber of Commerce. I am a Washington lawyer and I also had the responsibility to administering this act in the mid-1970's when I served as Deputy Assistant Secretary of Commerce. I also am an adjunct professor of law at Georgetown Law School where I teach in this area. So, I have an interest in the subject.

We very much appreciate the efforts you have made over the years to enhance and protect the position of American industry from unfair foreign competition. We are pleased that you are focusing your attention now on some unfairness that we think exists in the impediments imposed on our export sector.

The chamber has repeatedly expressed its concern about our government's propensity to control unilaterally for foreign policy purposes our exports which has cost, as Mr. O'Keefe says, billions of dollars and has caused rather significant harm to the reputation of this country and the creation of foreign competition over the long term.

Our export sector has suffered unilateral impediments but has accepted, at times not with delight, restrictions imposed only by our government in the form of the Arab boycott restrictions, foreign practice restrictions, national security restrictions, foreign practice restrictions, national security restrictions, and the like. These all have come from a national consensus as formulated in this body, in the Congress, and they are all to some extent rather predictable. If you are in a high tech business, you are aware that you must watch out for national security restrictions; or, if you trade with the Middle East you have to have an eye for a boycott.

PROBLEM WITH FOREIGN POLICY CONTROLS

The problem with foreign policy controls is, as Mr. Chapman said, they are changing winds. They are unpredictable and international trade abhors unpredictability. It doesn't work when it's unpredictable. That is precisely what we have experienced in the last 4 or 5 years.

There's a great paradox in that. This has occured at exactly the same time that successive administrations and this Congress have made terrific efforts to educate our public toward the need to enhance our export sector. It's incredible that just at the time we are doing that—spending a great deal of effort in the last session on the Export Trading Companies Act, et cetera—we are impairing ourselves in this way at a time that we feel it's unnecessary.

I would like to slightly restate the issue as you stated it in the beginning, Mr. Chairman. We think the issue is how to fashion the most effective set of economic tools—economic tools, not export controls—to assist the President in the implementation of foreign policy.

As you heard earlier, the responsibility for foreign trade rests in the Congress. The responsibility for the foreign policy rests with the President. There is a dynamic tension between the two, and we think that occasionally there has been error on the side of excessive delegation of your authority and your responsibility to the Executive branch.

In 1979, you delegated to the President very broad authority but you said this should be used sparingly. The language of the act says it should be used for foreign policy purposes only when "necessary" and only to further "significantly" the foreign policy of the United States. You set up a special set of criteria.

Since then, it has been increasingly clear that there have been significant, immediate and long-term economic costs. But what is less clear is how effective that control has been and whether less costly tools, economic or otherwise, political or otherwise, could have been used in place of the attack on our most vulnerable and most important sector—the export sector.

We do not argue that the President should be denied authority to control export for foreign policy purposes. He must be able to act on his own to fulfill international obligations of the United States pursuant to treaties and agreements. By their nature, those controls are multilateral. That means our competitors play by the same rules as we do.

In addition, the President has the authority to control exports arising out of certain specific legislation such as the Nuclear Non-Proliferation Act or specific authority within the present act such as the restriction of crime control equipment to certain countries. We support these delegations.

We also continue to support the International Economic Emergency Powers Act where the President is given authority in an emergency to act. We believe that these controls and this body of authority is well understood by the American community, their exporters, and their foreign purchasers. We also believe that that is sufficient.

Our experience has been, as you have heard all morning, highly discomforting to find the arbitrary action taken with inadequate justification, without sufficient consultation, without consideration of the cost and the effectiveness. We feel that one way to remedy this situation is to stop the delegation of authority at the line I have just drawn, giving the President sufficient authority to do all he needs to do. An alternate would be to ensure that a set of principles are established within the legislation such as ensuring meaningful consultation, prohibiting the extension of foreign policy controls on a retroactive basis, prohibitions to avoid impairing existing contracts, and hopefully restrictions on the imposition of unilateral controls.

I might just take a moment more to make some specific comments on your bill, Mr. Chairman.

First, we applaud the positive feature in your bill of changing the method of considering the criteria from merely consideration to requiring a formal determination. We think this represents a significant effort to achieve a more thorough analysis, a real analysis, of the cost and hopefully the effectiveness of what we are trying to do—prior to the imposition of controls.

We are pleased that you have added the requirement that other countries should support our controls. We hope you would consider strengthening that criteria by making it more than just support. Too often our competitors are delighted to support our suicidal unilateral action while they go out and take the business. We hope you would consider providing that support means agreement with and parallel control by all other trading competitors in the same sectors that are being controlled by the United States.

Interestingly, you seem to have deleted from the existing set of criteria one which requires the President to consider the foreign policy consequences of not imposing controls. It's an interesting concept. We would suggest that you consider returning that to a determination and perhaps adding to it a requirement for the President to determine that export controls—export controls, emphasis on the export—are required to achieve the intended foreign policy purpose and that no other form of political or economic action would have reached the desired effect.

We also applaud as a step in the right direction the language in your bill which would provide an element of sanctity of contract. This would bring us close to the level of protection accorded to the farming community. We hope you will include in legislative history or elsewhere due recognition to the fact that industrial sector contracts tend to be much longer term than those of the agricultural community and therefore more special attention has to be given to them.

PRESIDENTIAL EXEMPTIONS

Finally, with respect to your bill, we would ask you to reconsider somewhat the provision that would require the President to prohibit imports from a country which is a subject of foreign policy export controls. Your bill also would give him at the same time the authority to make all the exemptions he wishes. We would not like to see an automatic trigger of import controls at the same time export controls are being imposed. We would much rather have the Congress or the President have the flexibility to impose the right set of controls when absolutely necessary, import controls, export controls, financial controls, et cetera. We hope none will be necessary because, in my judgment, the case has never been made for the deployment of any economic tool as effective in achieving a foreign policy goal. We hope Congress will be the ones to make that judgment.

If I might make a very short and final note, we have been talking a lot about sanctity of contracts and the process by which the controls are imposed. This seems to me to suggest that I hope you will consider the entire question of due process and judicial review in this act.

Just as in 1979, a major step was made in segregating foreign policy control authority from national security authority, so also was there in that act an effort made to encourage the executive branch to deal with due process issues. But a continued exemption from judicial review, we think from a business viewpoint as well as a legal viewpoint, is an important area where the level of justice and due process that is currently underway is at a stone age level. We are not seeking a high level of sophistication in due process paralleling our high tech industry, but let's just bring it up to tribal justice. We would be pleased with that. It's embarrasing as a nation, as we saw last summer, to find foreign companies being shut out of business in the United States without any judicial process at all on an ex parte basis. There are a whole series of recommendations which we can make at the appropriate time. I just urge you to look at that issue.

[Complete statement follows:]

STATEMENT
on
EXTENSION AND REVISION OF THE EXPORT ADMINISTRATION ACT OF 1979
before the
SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY
of the
SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
for the
CHAMBER OF COMMERCE OF THE UNITED STATES
by
Arthur T. Downey
March 16, 1983

Mr. Chairman, I am Arthur T. Downey, partner in the Washington office of the law firm of Sutherland, Asbill and Brennan. Prior to this position, I was responsible for the administration of the United States' export control process as Deputy Assistant Secretary of Commerce for East-West Trade. In addition to my private legal practice, I am also chairman of the U.S. Chamber of Commerce's Task Force on Trade with the Nonmarket Economies, the unit responsible for formulating the Chamber's positions on East-West trade policy.

I am pleased, Mr. Chairman, that you have called hearings on the foreign policy controls section of the Export Administration Act (EAA) and that you have given me the opportunity to testify on behalf of the Chamber on this most important subject. As you are aware, the Chamber is the world's largest business association with a membership of over 230,000 small, medium and large businesses, trade and professional associations, and state and local chambers.

In the course of the last several years, the U.S. Chamber of Commerce has repeatedly expressed its concern over this country's propensity to control unilaterally, for foreign policy purposes, the export of goods and technology. Since enactment of the EAA, such controls have cost the United States billions of dollars in export sales and tens of thousands of real and potential jobs. Most damagingly, the United States has suffered significant harm to its reputation for commercial reliability, while concomitantly encouraging the creation of long-term foreign competition.

Paradoxically, this has occurred at the same time our government has attempted to educate U.S. business as to the importance of exports for the economic well-being of our country. The result has been continued uncertainty within both the agricultural and industrial communities and a frustration over what many see as undue regulation of the marketplace. While we hesitate, our trading competitors aggressively promote their exports around the world, including the United States.

Earlier this month, in a much welcomed speech, President Reagan referred to a "$2 trillion market abroad" and "a chance to create millions of jobs and more income security for our people" through an expanded national export program. As the President noted, four out of five new manufacturing jobs created in the last five years were in export-related industries. The President also correctly noted that 90 percent of American manufacturers, especially small and medium-sized firms, do not export at all.

In his speech, President Reagan outlined a plan to meet the trade challenges before us. Included in this plan are government efforts "to enhance the ability of U.S. producers and industries to compete on a fair and equal basis in the international marketplace." In this regard, the President noted the disincentive to export expansion created by U.S. controls on the export of technology, and referred positively to this Administration's success in eliminating a backlog of 2,000 export license applications and in relaxing export controls on low-technology items.

We applaud these efforts and, in particular, the personal commitment the President has made to export expansion through freer trade. We welcome the President's offer to work with American business and it is in this spirit that we offer our comments this morning. There is likely no other area of such importance in which to begin this joint effort than the administration of our country's exports.

The Realities of the Present International Economic System

During this year's reauthorization process, it is important that we dispel certain myths regarding our position in the world economic system which have impaired the effective implementation of the EAA. These points were discussed by Kempton Jenkins, Vice President of Armco Inc., during recent hearings before the House Foreign Affairs Committee and are worthy of repetition.

First is the view of the United States as the predominant supplier of equipment and technology. This view is a residue of the days when the United States was the preeminent economic power of the world. Although this no longer is the case, policymakers in this country have exhibited an increasing tendency to use export controls as a means to further political ideals without a careful assessment of foreign availability and, consequently, the costs or effectiveness of these decisions.

Second is the misconception that the Soviets and other potential adversaries are uniquely dependent upon Western technology. In fact, they are part of a real world in which we are, to differing degrees, all interdependent. Our Western competitors' and the Soviets' ability to channel resources into the development of specific technology is clear. Thus, the threat of export sanctions has led inevitably to investment in, and development of, the technology or product in question.

Third, corporations are not merely institutions. They encompass the workers, shareholders and communities in which they are located. This point was brought home to Congress during testimony last summer by the UAW representative from Springfield, Illinois, who aptly described the strains and dislocations caused to cities, such as Springfield, by non-security trade embargoes.

Finally, Mr. Chairman, we should deal with the myth that unilateral action by the United States is an act of strength and leadership. Any unilateral U.S. action that weakens alliance unity diminishes a most important strategic Western advantage and sends a signal to Moscow of weakness, not strength.

The Long-Term Cost to the United States of Unilateral Export Controls

Any discussion of the realities of the world marketplace must begin with the experiences of the U.S. agricultural community as a result of the administration of export controls. The United States has lost important shares of the world's agricultural markets in recent years, as a result of the imposition of unilateral agricultural export controls.

Through such controls, the United States has provided the incentives for the creation of a permanent foreign competition. This was as evident ten years ago when an embargo on U.S. soybean exports led Brazil to increase substantially its soya production and subsequently to become a major force in world markets, as it is today following the 1980 agricultural embargo against the USSR. As President Reagan pointed out on January 11 before the American Farm Bureau Federation, following the 1980 grain embargo, our 74 percent share of the Soviet market plummeted to 30 percent. This is particularly devastating in a period when we have massive surpluses in storage facilities around the country.

Leaders in the agricultural sector agree that the cumulative cost of the grain embargo to the United States has already exceeded $40 billion, and continues to grow. Coming at a time of perilous balance in the fragile agricultural market place, the unprecedented and ill-considered grain embargo of 1980 sparked a financial chain reaction. It affected planting, rail transportation, grain storage facilities, agricultural equipment purchases (International Harvester points to it as a major catalyst in its decline), farmbelt banking and insurance, grain mills, and on and on.

The recent Caterpillar experience with unilateral, non-security export controls on pipelayers is another graphic illustration. One need only examine what happened to Caterpillar's sales and those of Komatsu, its major international competitor, to the Soviet Union since mid-1978 when foreign policy export controls were placed on oil and natural gas equipment. Prior to mid-1978, Caterpillar dominated the Soviet market for large machines, supplying 85 percent of the market. Since the imposition of sanctions, the reversal has been dramatic. Komatsu now holds an 85 percent share of a rapidly growing market. Had Caterpillar maintained the share of business it held before the sanctions, as much as $400 million of additional U.S. exports and 12,000 man-years of employment at Caterpillar and its suppliers could have been generated. Follow-up sales of replacement parts would probably have added another 25 percent or $100 million in exports and 3,000 jobs. In view of the fact that these foreign policy export controls did not seriously disadvantage the Soviets, this seems an expensive price for Peoria and other communities to pay.

The U.S. aerospace industry has also incurred substantial costs as a result of the imposition of foreign policy export controls. One U.S. manufacturer alone estimates that it has lost $1 billion in the Middle East because the company is viewed as an unreliable supplier due to the proliferation of U.S. foreign policy export controls since enactment of the 1979 Act. An increasing number of customers are now requiring U.S. aircraft manufacturers to guarantee export licenses. Due to delays in licensing or through the cancellation of export licenses, U.S. manufacturers have had to repay to their customers progress payments, together with substantial interest penalties. In the case of contract cancellations, the manufacturer must also sustain the cost of modification of the aircraft for resale. This may run over $1 million per airplane. The affected U.S. firms must also pay substantial storage costs, for in many instances up to two years, as well as the costs of keeping the aircraft in operating condition. We must recognize that the transfer of business from U.S. aircraft producers to our European competition does not advance U.S. foreign policy; it erodes U.S. aerospace capacity.

The experiences of Armco Incorporated point to similar conclusions. After almost four years of technical and commercial negotiations, Armco and Nippon Steel Corporation signed in December 1979 a contract with the Soviets valued at $353 million. The contract provided that Armco and Nippon would supply technology, engineering services and equipment to build a plant in Novolipetsk for the manufacture of electrical steel. The U.S. portion of the contract was valued at $100 million. At the time of the contract signing, Armco had received 94 percent of all necessary licenses from the U.S. government. In January 1980, following the Soviet invasion of Afghanistan, President Carter suspended all export licenses for the Soviet Union. In April, the Armco contract was terminated by the Soviets because Armco's export licenses had not yet been reinstated. In August, Creusot-Loire of France signed a substantially similar contract with the Soviets despite "assurances" from the French government that they would not take over contracts from American firms. As a result, Armco lost $6.5 million in negotiating expenses, $16.7 million in profits, and $20-30 million in future spare parts orders, as well as the chance to participate in the next phase of the plant development. Most importantly, the United States lost $100 million in exports and some 4,000 jobs.

The realities of the world trade system also become strikingly clear when we examine the effects export sanctions have had on the American oil and gas equipment industry. Today we are witnessing widespread foreign production of advanced oil and gas equipment where a few years ago the United States was the sole supplier of advanced systems. In this regard, we should not delude ourselves over Soviet abilities to get these goods elsewhere in the world or their own capabilities to produce similar equipment. The Soviets are now perfecting their own technologies to produce oil and gas equipment, including compressors for use on natural gas pipelines. As a result, we are rapidly losing markets traditionally dominated by U.S. oil and gas equipment firms. Lost markets have translated into declining earnings and major constraints on research and development, all of which raises major concerns as to the international competitiveness of this U.S. industry in the years to come.

Foreign Policy Export Controls

The issue facing Congress as it reviews Section 6 of the EAA is how to fashion the most effective set of economic tools to assist the President in the implementation of this country's foreign policy. Furthermore, it is crucial that Congress devise a mechanism to assess more accurately the likely costs and effectiveness of the use of these economic tools.

The Chamber recognizes that the President must be able on his own -- without further Congressional action -- to restrict exports in order to fulfill obligations of the United States pursuant to international agreements. By their nature, controls imposed under this authority are multilateral in character.

In addition to this export control authority, the 1979 Act provides the President with authority to restrict the export of crime control and detection instruments to certain countries. The Chamber supports these controls, which together with those provided for under separate legislative authority, constitute a body of law well understood by both American exporters and their foreign purchasers.

However, the Export Administration Act of 1979 also provides broad authority to control exports in order to further significantly the foreign policy of the United States. In recent years, this authority has been arbitrarily invoked with inadequate justification, without significant consultation and without adequate consideration of the effectiveness of export sanctions or the long-term cost to U.S. economic well-being.

To remedy this situation, in the absence of an international emergency, Congress should require that, prior to the imposition of foreign policy controls, meaningful consultations with the private sector and Congress must be undertaken to determine the full extent of the costs of these controls to the United States. The Act should prohibit the extension of export controls for foreign policy purposes on a retroactive basis to foreign companies, including U.S. foreign subsidiaries and the licensees of U.S. corporations. It should prohibit the imposition of foreign policy export controls so as to impair existing contracts, and, above all, it should provide specific restrictions against the imposition of unilateral export controls, given the futility and costs of such actions.

One way to achieve these principles would be to require that the President seek specific legislative authority, along the lines of the crime equipment controls, prior to the imposition of any new foreign policy controls. Special legislation -- such as occurred with the Uganda sanctions in 1978 -- could give the President clear authority to draw upon the full range of economic interactions, including imports and financial transactions, as well as exports. This would relieve the vital and vulnerable export sector from carrying the brunt of economic sanctions. This would also provide business, unions and other affected groups the full opportunity to express their views during the legislative process. It would also produce a solidly based foreign policy initiative, representing a full national statement, not simply a hasty act by the Executive Branch.

Another approach to this same goal would be to provide, in the absence of an international emergency, a forum to give the public an opportunity to consult with the Administration and Congress prior to the imposition of a foreign policy export control. Rather than requiring specific legislative authority, the Act could require that the Executive Branch receive public comment and submit to Congress a comprehensive cost/benefit analysis justifying the proposed controls prior to their taking effect. Such controls could expire after a six month period unless renewed following the same rigorous requirements for their imposition.

Whatever procedure is ultimately adopted, Congress must not lose sight of the general principles of contract sanctity, the avoidance of extraterritorial applications, and the requirement for multilateral controls, advanced consultations, a rigorous cost/benefit analysis, and assurance that export trade restrictions are imposed only when necessary to achieve a genuinely significant and fundamental foreign policy goal. These principles must be recognized in legislation so that an export control law that defends our international political interests will not undermine our competitiveness in international trade and erode our reputation for commercial reliability at a serious cost to U.S. economic well-being.

S.397, Export Administration Act Amendments of 1983

Commenting briefly on legislation currently before this body, we commend you, Mr. Chairman, as well as Senator Garn, for the serious attention you have given the export administration process, as exemplified by S.397 and S.434. As S.434 represents a simple extension of the present foreign policy controls authority, I would like to focus my comments on S.397.

As the events of the last five years have clearly indicated, unilateral foreign policy controls in situations where alternate suppliers exist impact almost exclusively on U.S. exporters. Again, there may be times when, regardless of foreign availability, as in the case of crime control and detection instruments, the United States may wish to place controls on the exports of specific items. It is important, however, that there be a consensus behind the imposition of such controls rather than have them serve as a source of division between the Executive Branch on the one hand and Congress and business community on the other.

A positive feature of S.397 is the way in which it deals with the criteria that currently must be considered before the imposition of foreign policy export controls. By strengthening the criteria, including the addition of language on the extraterritorial effects of proposed controls, and modifying them from a "consider" format to a "determine" one, the bill represents a significant effort to achieve a more thorough analysis of the costs of foreign policy controls prior to the imposition of such controls.

With regard to the requirement that other countries support the imposition or expansion of those controls invoked under the foreign policy controls section, we suggest that it be strengthened to require that those controls be imposed on a multilateral basis by the major suppliers of the goods or technologies in question. Such a revision would preclude situations experienced in the past where our trading competitors voiced support for our efforts and then proceeded to fill those orders lost by U.S. suppliers.

The most interesting of the criteria established in S.397 is the requirement that the President determine that proposed controls will not have an adverse effect on the United States' export performance, international competitiveness, and reputation for commercial reliability or an adverse effect on individual U.S. companies, their employees and the communities in which they reside. It is time that we recognized that any export sanction is going to have a domestic economic cost. Consequently, while we agree that the President must carefully weigh these costs, it is difficult to accept this provision as either realistic or workable.

One criterion which S.397 deletes from the present Act is consideration of "the foreign policy consequences of not imposing controls." We suggest that a variant of this criterion be retained to require a determination that significant negative consequences would occur if no export action were taken. After considering other forms of political and economic actions, the President should determine that export controls are required in order to achieve the intended foreign policy purpose and that no other form of political or economic action would have a similar result.

By requiring that the President transmit a report to Congress on his determinations no later than the date on which controls are imposed, S.397 represents a serious effort to achieve a more meaningful consultative mechanism between the Executive Branch and Congress. This mechanism should be even further refined and strengthened to ensure that the consultation process is in motion well in advance of decisions to impose foreign policy export controls. It is also important that the business community become an integral part of this process. If previous consultations with industry advisory groups are indicative of the future, strict guidelines need to be included in the Act, as well as the legislative history of the Act.

S.397 also provides that foreign policy export controls "shall not apply to exports pursuant to a contract or other agreement entered into prior to the imposition of such controls." We applaud this language. It is a step in the right direction toward giving U.S. industry similar protections to those achieved for the farm community through the Commodity Futures Trading Commission legislation.

However, we caution that, unlike agricultural commodity contracts, contracts for the sale of industrial equipment and technology are frequently long-term and may require years of implementation. Technology transfer, in particular, is generally an ongoing process and may require several export licenses and license renewals. Any interruption of this process would have major consequences for the entire contract. It is, therefore, important that any contract sanctity provision recognize this long-term nature of industrial cooperation. Without long-term protection in the EAA, our Western trading partners will continue to look upon the United States as an unreliable supplier of technology.

Another area that deserves consideration is the question of judicial review. We do not suggest that the Courts review questions of foreign policy. However, we do feel that the Courts have a proper role in reviewing whether administrative determinations were supported by evidence or at least were not arbitrary and capricious. In the enforcement area, we witnessed last summer, following the extraterritorial application of oil and gas equipment controls, the costs and unintended difficulties created by the lack of judicial review in the export administration process.

Judicial review need not retard the export control process. Rather, it can strengthen the integrity of the export control process by making provision for firms seeking relief from arbitrary and capricious administrative decisions. In this regard, we propose that the Act provide exporters a right to appeal to independent or judicial authorities Department of Commerce administrative decisions, including statutory procedural requirements and administrative penalties.

Finally, we question the provision in S.397 requiring the President to prohibit all imports from a country that is the subject of U.S. foreign policy export controls, while at the same time giving the President authority to make sweeping exemptions. Export controls should not necessarily trigger import restrictions, particularly as the target of a foreign policy export control may be purposely limited, such as in the case of crime equipment. To mandate import controls or export controls would needlessly impair the President's flexibility to use the most appropriate mix of economic tools before him.

Conclusion

We applaud the Administration's "new priority for trade" as outlined in the President's State of the Union address. It is time that we all worked together to restore U.S. leadership in world trade. To this end, it is crucial that we strengthen the reputation of the United States as a reliable supplier and competitive trader operating under a clearly defined and internationally recognized system of export incentives and export controls.

This will require, above all, that the United States reassert its position of leadership within the Western Alliance, working with our allies to refine and improve Western trade practices and controls. For the United States, meeting this challenge will require a joint effort by the public and private sectors.

In conclusion, we wish to underline the fact that the business community and specifically the Chamber is dedicated to protecting the security interests of the United States. A sound domestic economy is an essential part of these security interests. We want to work in the spirit of partnership with the Administration and Congress to strengthen this country's security and economic well-being. We thank you, Mr. Chairman, and the members of this subcommittee for this opportunity.

Senator HEINZ. Mr. Downey, thank you very much.

Mr. Giffen.

STATEMENT OF JAMES H. GIFFEN, CHAIRMAN, NEW YORK DISTRICT EXPORT COUNCIL, CORPORATE VICE PRESIDENT-CORPORATE STRATEGY & DEVELOPMENT, ARMCO, INC.

[Complete statement follows:]

Statement of

James H. Giffen

Corporate Vice President

Armco Inc.

Mr. Chairman, members of the subcommittee, my name is James H. Giffen. I am Corporate Vice President-Corporate Strategy and Development of Armco, Inc. and President of Armco's foreign trading subsidiary, Armco International Inc. which coordinates Armco's marketing program in the planned economy countries. I am also Chairman of the New York District Export Council.

Mr. Chairman, in 1969, at about the same time this subcommittee was considering revisions to the Export Control Act of 1949, Armco received an inquiry from the Soviet Union concerning Armco's interest in selling its electrical steel technology.

In June of 1973, after we had made a preliminary determination that an export license might be granted for the export of the technology, we submitted a general proposal to Minister of Foreign Trade Patolichev during his visit to Washington with General Secretary Brezhnev.

In 1974, we concluded an aide memoire with the Ministry of Foreign Trade which noted the Soviets' desire to purchase and Armco's desire to sell the electrical steel technology previously requested.

On April 16, 1976, after the Soviets had defined the type of project they were interested in, Armco received a specific inquiry and request to submit a quotation for the technology, engineering and equipment for an electrical steel facility to be constructed in the city of Novolipetsk in the Soviet Union. Because of a lack of United States Export-Import Bank financing for exports to the Soviet Union, Armco joined forces with Nippon Steel Corporation of Japan to make use of Japanese Export-Import Bank financing and we submitted a proposal for the Novolipetsk facility.

Between 1976 and 1979, a 40-man Armco-Nippon Steel technical and commercial team made hundreds of visits to the Soviet Union to negotiate the transaction. For example, in 1979, I personally made 14 trips to Moscow to complete the negotiations.

On December 17, 1979, after three years, eight months and one day of negotiations from the date we had received the original specific inquiry and some ten years from the initial Soviet contact, the Chairman of Nippon Steel, the Chairman of Armco and I signed an 8,000 page, 23 volume contract for $353 million.

Seven days later, the Soviets marched into Afghanistan and on January 11, 1980, Armco was informed that the export licenses that had been previously granted under the authority of the Export Administration Act had been suspended and that no action would be taken on other outstanding license applications. While we formally terminated our contractual relationship with the Soviet Ministry of

Foreign Trade on the project in April of 1980, we did not receive notice that our license was withdrawn until May of 1981.

You should understand that during the several years of negotiations, we had been in close competition with other European and Japanese companies. Our closest competitor was Creusot Loire of France. As soon as we terminated our discussions with the Soviets, representatives of Creusot Loire immediately began negotiations on the project even though the French government repeatedly informed the United States government that, in general, it would not allow French companies to take over executed contracts of American companies which had been terminated because of the Afghanistan sanctions and, in particular, would not allow Creusot Loire of France to take over the Armco-Nippon Steel contract.

On August 1, 1980, however, the French government informed the United States government that it would allow Creusot Loire to do so and within 30 days a contract was signed between Creusot Loire and the Soviets on a "Novolipetsk project" which was purportedly different from the Armco project. That contract is now being executed and the Novolipetsk electrical steel facility is being constructed.

With the imposition of the export controls on the Novolipetsk project, the United States and Japan lost over $300 million in positive balance of payments from the loss of the exports as well as the jobs that would have been created from such exports. Armco and Nippon Steel lost over $40 million in capital formation and, of course, some $5-6 million in negotiation expenses. Furthermore, Armco's opportunities to sell further metallurgical technology or oilfield technology and equipment to the Soviets in the future was considerably weakened, if not totally lost. The lost jobs and profits resulting from the restrictions may not seem very significant, Mr. Chairman, but if they are not, someone should tell that to the 15,000 Armco employees who have been laid off in the last twelve months due to the current recession and to our shareholders.

Mr. Chairman, the cost of export restrictions and trade sanctions are explicit and felt immediately by the American business community. Many of us who are experiencing those costs appreciate this opportunity to review the language and implementation of the Export Administration Act of 1979. The key issue that must be addressed is whether the desired effect, result or purpose of the restrictions and sanctions has been, or will be, achieved and whether that result or purpose can be achieved on a cost effective basis.

Today, Mr. Chairman, I would like to limit my remarks to the question of how effective the restrictions or sanctions have been which have been established under the authority of either the national security or foreign policy provisions of the Act, and what revisions might be recommended to make the Act more effective. I will also make my remarks in the context of the Act's application to the Soviet Union.

National Security Export Controls

First, let's consider the controls which have been promulgated under the national security provisions of the Act.

The Export Administration Act of 1979, like its predecessor, the Export Control Act of 1949, makes it quite clear that it is the policy of the United States to use export controls to restrict the export of goods and technology which would make a significant contribution to the military potential of any other country which would prove detrimental to the national security of the United States. The only thing that is not clear is what that phrase means and how it should be implemented.

It is clear that the Act intends to restrict the export of any technology or product which is basically military in nature such as weapons. It is also clear to even those who hold philosophies which are just to the right of "Attila the Hun" that the Act is not intended to restrict obvious non-military items such as consumer goods. The key issue is, however, where do we draw the line between those two items? Mr. Chairman, this is not an easy issue to deal with because it requires subjective judgments.

The current legislation refers to exports which would make a significant contribution to the military potential of another country and which would prove detrimental to the national security of the United States. The judgment as to what is "significant" is necessarily subjective and dependent upon the perception of the current political and military situation at any given time.

That, Mr. Chairman, is precisely what worries some of us in the business community. Those who are against any trade between the United States and the Soviet Union today do not necessarily need the foreign policy provisions of the Export Administration Act to limit or prevent an expansion of trade. All they need merely do is claim that a given political or military situation in the world caused by an adversary nation has changed the status quo in such a way that exports which previously had not been considered militarily significant are now considered to be significant.

For example, when we were notified in January of 1980 that our licenses for the Novolipetsk facility were to be suspended, we were left with a clear impression that they were being suspended for foreign policy purposes. However, when we were notified by the Department of Commerce that our licenses were revoked, we were told that they were being revoked on the grounds that "in light of the national security situation following the Soviet invasion of Afghanistan", the export of electrical steel technology for the Novolipetsk facility would be "detrimental to the national security interests of the United States".

Furthermore, without Congressional direction, some might argue that export controls should be utilized to prevent not only exports which significantly contribute to the military potential of the Soviet Union but also exports which contribute indirectly to the military potential through the strengthening of the Soviet economy. This argument is based upon the proposition that the military potential of the Soviet Union rests upon the technological base of the economy and that, therefore, no export should be allowed which contributes to the Soviet economy. I do not think that is, nor should it be the intention or the purpose of the national security controls of the Act.

Mr. Chairman, I would argue that the clear intent of the Act ought to be that export controls should be utilized to restrict exports which would make a direct, significant contribution to the military potential of the Soviet Union which would prove detrimental to the national security of the United States and, that controls should not be utilized to restrict exports which have an insignificant military impact and which contribute to the economic potential of the Soviet Union. Any export theoretically helps an importing country's economy. Such a standard, if adopted, would simply be no standard and the Executive Branch would be free to utilize their absolute discretion in determining what exports should be controlled and when.

Furthermore, if the United States is to restrict exports to the Soviet Union in order to prevent a contribution to its military potential, the United States should not act unilaterally. The United States should negotiate with its allies in an attempt to enter into a coordinated effort to prevent the export of militarily significant goods and technologies to the Soviet Union. Export controls on technologies or products which are freely available to the Soviet Union from Western Europe or Japan are neither productive nor effective from a national security standpoint. Therefore, such controls should be eliminated if there has been a determination of foreign availability.

I believe that the Department of Commerce, in consultation with American industry, is best suited to make the determination.

I believe, however, that further funding is necessary to ensure that the Department of Commerce is adequately staffed to make professional evaluations.

Finally, once those evaluations are made, American exporters should have a right to appeal the decision of the Department of Commerce to some disinterested third party, so that a proper adjudication and review of the facts can be made.

Foreign Policy Export Controls

While the American business community believes strongly in the necessity for national security controls which are properly designed and administered, most of us also believe that there is some question as to whether foreign policy controls ever have been or will be effective. Effectiveness must be measured in terms of what you are attempting to accomplish.

There are only three possible reasons why export controls should be utilized for foreign policy purposes.

First, foreign policy export controls can be utilized for punitive purposes. For example, controls can be applied against exports to the Soviet Union based upon the proposition that the Soviet Union is the chief adversary of the United States and that we should, therefore, utilize sanctions to damage the Soviet Union both economically and militarily. Let's call a spade a spade. Utilizing sanctions for punitive purposes is economic warfare.

Second, foreign policy export controls can be utilized for remedial purposes, that is to say, controls can be used in an attempt to remedy a specific situation. We can apply sanctions against the Soviet Union in an attempt to pressure or even coerce the Soviets into taking some particular action or refraining from some activity.

Third, foreign policy export controls can be utilized for declarative purposes. We can apply controls against the Soviet Union in an effort to make a political statement which registers our indignation and displeasure over certain Soviet activities. The controls can be aimed at the Soviet Union and/or the international or domestic politic.

Regardless of which purpose is chosen to justify the use of such controls, the question must be raised as to whether the desired purpose can be achieved.

To successfully utilize trade sanctions against the Soviet Union in an attempt to inflict punishment or induce remedial Soviet action, the United States must have leverage.

No trade sanction, no embargo, no act of economic warfare has ever worked when the country applying the sanction or embargo did not have leverage. A country can only have leverage with respect to a second country when that second country has either an absolute need or the perception of an absolute need for a particular technology or product and no other source to obtain it from except the country applying the embargo.

Quite frankly, Mr. Chairman, many of us in the business community cannot think of any technology or product which is not available to the Soviets either internally or from our trading partners that do not join us in such sanctions that the Soviets need and which is fundamental to the survival of their country. If that is the case, many of us find it difficult to believe that trade sanctions can ever logically be utilized to coerce the Soviets into taking a particular action. Quite the contrary, it may well stiffen the resolve of the Soviets to do just the opposite.

It might be argued, however, that there are several technologies and products which the Soviets do need and which might be significant to the development of their economy and, if the United States were successful in inducing our trading partners to join in a multilateral sanction involving those particular technologies or products, it would be harmful to the Soviets. The question is, will our trading partners join us in such sanctions, and if they won't, what will be accomplished? If they do join us in applying sanctions, we will be engaged in economic warfare which will not only increase international tensions but will also raise doubts, to the rest of the world as to the reliability of the United States and the West as a supplier. If they do not join us, very little will be accomplished except that United States business will lose another market to our trading partners.

Even if foreign policy controls are not used to punish the Soviets or coerce them into making political concessions, some would argue that the use of sanctions or embargos is an effective method of making a political statement.

Mr. Chairman, I believe that is true. I believe that the withdrawal of trade is a very serious matter and one which every country in the world would understand as being a sign of displeasure. However, as we all know, there are both benefits and economic and political costs involved in applying trade sanctions and the consequences should be carefully considered before taking such action.

For example, as soon as sanctions are applied, the American business community and the United States economy experience rather immediate direct costs. Some argue that these costs are not very significant. Let's examine that issue.

While it is true that U.S.-Soviet trade has never been more than 0.5% to 1.2% of total United States foreign trade, U.S.-Soviet trade is not necessarily insignificant.

Consider the record.

Since 1970, the United States has realized a negative balance of payments in its overall trade turnover in all but three years. During that same period, however, the United States realized a positive balance of trade with the Soviet Union in every year. In fact, the positive balance of trade with the Soviet Union reduced the overall deficit by approximately 5-10% throughout the period, thereby strengthening the dollar and contributing to the United States economy.

Furthermore, while the United States had realized a net positive balance of approximately $450 billion (as measured in 1982 dollars) from its overall trade since 1914 - approximately $40 billion of that amount was realized from United States' trade relations with the Soviet Union.

There are other benefits that can be lost;

- trade with the Soviet Union leads to capital formation and creation of jobs,
- trade with the Soviet Union gives the United States access to Soviet raw material sources and sources of energy supply, thereby creating less dependency on Middle East sources,
- trade with the Soviet Union helps create standardization and therefore dependency upon American technology and products for the future through sales of such products to the Soviet Union today, and
- trade with the Soviet Union provides the United States with access to new technology not available in the United States.

In addition to these obvious potential lost benefits, the United States business community also suffers future potential losses because not only the Soviet Union but also the rest of the world have come to look upon us as an unreliable supplier.

Finally, if unilateral controls or sanctions are applied and attempts are made to apply them unilaterally and exterritorially, we not only lose economic benefits, we lose political benefits as well. One of the features that differentiates the West from the Soviet Union and gives it the strength and resolve to cope with the Soviets both politically and militarily is the Alliance.

Unilateral, exterritorial sanctions that divide the Alliance can only be useful to the Soviets. No good can come of it to the United States.

If, therefore, sanctions are to be utilized for foreign policy purposes upon the basis that it is an effective method of making a political statement, the benefits that are to be derived from making that statement must be carefully analyzed. Many of us in the business community believe that there are more cost effective methods of accomplishing our goals. For example, after the placement of the various controls and sanctions on trade with the Soviet Union since 1978 and with the loss of several billion dollars of contracts, what have we really achieved?

Have Shcharansky or Ginzburg been released? Has Soviet immigration gone up or down since 1978? Have the Soviets pulled out of Afghanistan? Have the Soviets decreased their influence in Poland? Have we stopped the Urengoi pipeline?

Recommendations

Mr. Chairman, after having been involved in U.S.-Soviet trade for over twenty years and watching United States export policy zig zag depending upon the perception of one administration to the next, and after watching our balance of payments situation steadily decline, I would argue that the time has come for the United States to adopt a comprehensive, coordinated, and effective export policy toward the Soviet Union. Accordingly, I would like to make the following recommendations with respect to the revision and extension of the Export Administration Act.

A. National Security Export Controls

National security controls are absolutely necessary to the national security of the United States. However, the following recommendations are suggested to make such controls more effective.

1. Administration of the Act

The Department of Commerce (in consultation with other interested departments and agencies of the United States government), is the proper agency administering the Act. An Office of Strategic Trade is not necessary at this time.

What is necessary is further funding for the Department of Commerce to hire adequate numbers of professional and experienced experts to help administer the Act.

2. Legislative Direction and Intent

a. Exports Which Contribute to Military Potential

The Act should clearly define standards that should be utilized by the Executive Branch in administering the Act and in determining which exports would significantly contribute to the military potential of any country which would prove detrimental to the national security of the United States.

Language should be drafted that makes it clear that such controls apply only to exports which both directly and significantly contribute to the military potential of any country. The Act should not be applied to exports simply because they might contribute to a country's economy. There must be some military application and it must be significant. For example, without the export, a country could not accomplish some military act within some realistic time frame.

b. Foreign Availability

Unilateral controls should not be allowed. The determination of foreign availability should be a precondition before the imposition of such controls and the burden should be upon the government to prove that foreign availability does not exist once it has been alleged by the private sector. The "loophole" provided in Section 4C of the Act should be repealed.

c. Sanction of Contracts

Once contracts have been concluded under the authority of general licenses or once valid licenses have been granted, controls or sanctions should not be allowed expost facto. As President Reagan has stated "there must be no question about our respect for contracts. We must restore confidence in the United States' reliability as a supplier."

d. Extraterritoriality

Foreign policy control provisions should not be applied in an extraterritorial manner. The recent experience with the Urengoi Pipeline proved the futility of such an approach. The Alliance suffered more than the target country.

3. Multilateral Controls

A revised Export Administration Act should direct the President to enter into multilateral agreements and perhaps even treaties with our trading partners and to gain a common agreement as to what should and should not be controlled for national security purposes.

4. Industry Consultation

The Department of Commerce should be directed and required to work closely with representatives of the private sector in reaching a determination as to which exports should be controlled for national security purposes. Language should be added which requires a serious review with private sector representatives with respect to both the nature and use of the export and its foreign availability.

5. Administrative Review

Finally, some provision must be made to ensure the decisions that are made within the policy set forth in the Export Administration Act have been implemented fairly. Some provision must be made that actions taken by the Department of Commerce or other administrative agencies are capable of review by either the Congress, an independent government agency or the judicial branch of our government. Decisions, for example, with respect to foreign availability, are simply too subjective to be left without the spector of review.

B. Foreign Policy Export Controls

There is no necessity for the inclusion of foreign policy controls within the Export Administration Act. The President has adequate authority to apply emergency export controls under the International Emergency Economic Powers Act or, alternatively, he can always ask Congress for legislative authority to impose special controls. However, if the Congress in its wisdom, determines it necessary for the President to have the authority to apply foreign policy controls under the Export Administration Act, the President should, at minimum, be required to consult with the Congress and provide a public forum for comment before the application of such controls.

If he is given the authority to apply such controls for foreign policy purposes, the following principles should be written into the Act.

1. Legislative Direction and Intent

   The same direction and intent should apply to the use of foreign policy controls as applies to national security controls with respect to foreign availability, sanctity of contracts and extraterritoriality.

2. Industry Consultation and Cost Benefit Analysis

   Since utilizing foreign policy controls for remedial or punitive purposes in all probability will prove futile, a careful cost benefit analysis must be provided for in any new revised legislation in consultation with the American business community, since it is the American business community that will most directly feel the effects of the use of such controls.

3. Administrative Review

   The same provision for administrative review should apply to the administration of both national security controls and foreign policy controls.

Conclusion

Mr. Chairman, the United States business community believes in strategic arms reductions and understands there are differences between our two countries with respect to the method of implementing such reductions.

The United States business community understands there are differences between our two countries with respect to Soviet actions and activities in Afghanistan, Campuchea, Poland, the Middle East, Southern Africa and Central and South America.

The United States business community believes in the dignity of man and understands that there are differences between our two countries with respect to each country's concept of human rights.

But the American business community asks, are foreign policy controls and sanctions the most cost effective method of making progress on these issues or, are we merely utilizing them out of a sense of frustration because we do not have the imagination or resourcefulness to find other alternative means of dealing with the Soviets? When, Mr. Chairman, are we going to realize that no sovereign power will allow itself to be blackmailed or bullied? If progress is to be made on the outstanding issues between the United States and the Soviet Union, we must commence serious negotiations on all of the issues. Hopefully, those negotiations will begin soon.

In the meantime, Mr. Chairman, we must utilize export controls for the purpose for which they are most effective; namely, as a mechanism to control (together with our Allied trading partners) exports which would contribute both directly and significantly to the military potential of the Soviet Union.

Mr. Chairman, in recent years, relations between the United States and the Soviet Union have been deteriorating and the prospects for the future are not positive. The Soviets have proven themselves to be both pragmatic and opportunistic and they take advantage of any situation whenever it has been in their best interest to do so. When they have been successful, it has been at least in part, because the United States has not been able to put competing priorities in perspective.

Mr. Chairman, the first priority of the United States is national security but, the national security is dependent upon maintaining a strong, military capability and a healthy and vigorous economy. We must strike a balance between concerns that we might well be exporting technology or products that contribute to the Soviet military potential and concerns that our regulations will be overly restrictive and impact the entire trade process - thereby reducing whatever advantages the United States might obtain from such trade.

In short, the time has come for the United States to adopt a cohesive and coherent foreign economic policy. The adoption of a revised Export Administration Act will help to fulfill that goal.

Mr. GIFFEN. Mr. Chairman, I first testified on this subject before this committee in 1969. After 14 years of submitting testimony on export control policy, I begin to ask myself, "Is anybody listening?" I sincerely hope so. Thank you.

Senator HEINZ. Well, Mr. Giffen, let me welcome you back again to the committee. Maybe you can make this your last appearance. Thank you.

Mr. Neely.

STATEMENT OF J. W. NEELY, PRESIDENT, PETROLEUM EQUIPMENT SUPPLIERS ASSOCIATION; CHAIRMAN, SMITH INTERNATIONAL

Mr. NEELY. Thank you, Mr. Chairman. My name is Jerry Neely. I'm chairman of Smith International, Inc., and I'm here this morning representing the Petroleum Equipment Suppliers Association.

[Complete statement follows:]

STATEMENT OF J. W. NEELY

PRESIDENT OF PETROLEUM EQUIPMENT SUPPLIERS ASSOCIATION
(CHAIRMAN, SMITH INTERNATIONAL, INC.)

Executive Summary

Trade controls used as an instrument of foreign policy have been tremendously costly to the U.S. economy in terms of lost business, lost markets, and lost jobs. The long term costs are even greater, including loss of leadership, loss of reputation for reliability, and loss of opportunity for future business. In the past, the effect of unilateral sanctions has been to redirect trade, to catalyze the economy of the target nation, and to harden the resolve of its government to resist. Sanctions increase the isolation of the target nation, decrease its vulnerability to outside influence, and encourage it to draw more deeply on its own resources, diversifying its economy and redirecting its trade. Long range risks of imposing sanctions include the abandonment of the U.S. as an export base and the splintering of the Atlantic Alliance.

We recommend that the President's power to impose export controls for purposes of foreign policy be limited to the most unusual circumstances, and be exercised only after a compelling show of effectiveness and need. We recommend that Congress eliminate retroactive controls, extraterritorial controls, and the likelihood that sanctions will be unilaterally imposed. We ask that existing criteria for imposing controls be strengthened, and that appropriate safeguards be written into law, so that the President cannot impose sanctions without due process.

Trade Sanctions and the Bottom Line:
Learning from the Future

Mr. Chairman, my name is J. W. Neely. I am President of the Petroleum Equipment Suppliers Association. PESA is a trade organization comprised of manufacturers and suppliers of oil and gas equipment and services. Our organization includes 341 companies, large and small, which compete in the supply of products and services in the search for oil and gas. A significant portion of U.S. jobs are involved in the annual $12 billion worth of export sales by our industry. Our members produce a complete spectrum of products for the oil and gas industry worldwide.

Recently, the oil and gas service and supply industry has served as ammunition in a foreign policy war. In 1978, President Carter first imposed selective restrictions on oil and gas equipment supplied to the Soviet Union. In 1979, when the Soviets invaded Afghanistan, the restrictions were extended. In 1981, citing Soviet interference in Poland, President Reagan extended the sanctions again. In 1982, new restrictions were imposed, this time against Libya. On June 22, 1982, another extension included several especially distressing features, such as the retroactive application of new controls and extraterritorial jurisdiction over foreign subsidiaries. The trend is alarming. "Instead of viewing export controls as a weapon of last resort in an arsenal of diplomatic and economic options," as the Business Roundtable has observed, "our Government has increasingly reached for the export controls weapon to fire the opening shot."[1] Yet the behavior of our adversaries has not changed.

As the whipping boys of foreign policy, PESA members are vitally concerned about the use of trade sanctions. When, if ever, are export sanctions appropriate? There are four questions that need to be answered here. What are the costs; what are the risks; what are the benefits; and finally, what is the bottom line.

WHAT ARE THE COSTS?

The immediate cost of sanctions is the cost of lost business due to broken contracts or unconsummated sales. Recently, the cost to the oil and gas service and supply industry has been heavy indeed. Caterpillar estimates recent lost sales of about 1200 tractors and pipelayers.[2] Cooper Industries reports the foreiture of perhaps $100 million in sales after the June 22 sanctions.[3] Dresser Industries estimates the loss $120 million due to recent sanctions, a figure which translates into 2400 jobs.[4] The Journal of Commerce concludes that "U.S. firms may have already lost between $500 million and $1 billion in pipeline business to competitors in Japan and Western Europe."[5]

It is true that the larger part of the costs of pipeline sanctions fall on the larger suppliers--Dresser, Catepillar, and others--who presumably are able to stand the pain. Yet costs also fall on smaller firms and their suppliers, which are less able to absorb the losses. PESA represents 341 companies. Many of these are small entrepreneural firms with under 200 employees. These companies are characterized by innovation, creativity, risk. They represent the sector of our economy in which most new jobs are created. Losses fall heavily on this sector, restricting opportunity and depressing development and growth. Economic setbacks ripple through insurance, banking, metalworking equipment, and a host of other businesses that support our industry, taking an incalculable toll in jobs.

A few hundred million or even billion dollars might seem like a small price to pay to stop the Soviet pipeline. However, the pipeline will be build--with supplies from other countries. PESA has compiled a list of 600 non-U.S. suppliers of oil and gas field equipment and services. Virtually every item sought by the Soviets is manufactured by a supplier on that list. We certainly do not claim that the quality of our competitors' parts is equal to that of ours, but in a pinch they will do the job. According to a recent report in the Oil & Gas Journal, the Soviet Union's pipeline construction program set records for mileage completed and capacity added during 1982 in spite of sanctions.[6] Obviously, unilateral trade sanctions cannot succeed when alternate suppliers abound; business is simply redirected to non-U.S. companies.

The United States has long been recognized as a world leader in the oil and gas service and supply industry. What is not widely recognized is that our lead is tentative, like a six point lead in a Superbowl game, and is based not on technological superiority alone, but on a combination of factors including service and reputation. Trade sanctions strike at the heart of our reputation for reliability that has been so important in building markets. Since the Export Administration Act was first invoked, PESA members have had to operate under the growing realization by customers and competitors alike that our business could be arbitrarily curtailed by government fiat. The pipeline sanctions, as Cooper Industries points out, "telegraphed to the world that U.S. contracts can no longer be considered as binding commitments."[7] Because export agreements often involve promises for the delivery of goods and services years in advance, the ability of U.S. firms to enter into and fulfill long term contracts has been called into question, weakening our competitive position. It is easy to see how the lead in oil and gas equipment sales and service could soon pass from the United States to other nations. The problem is not limited to the petroleum service and supply industry. Once sanctions are imposed, they taint all American goods with a political risk factor that erodes their marketability. Thus, as Alexander Trowbridge, president of the National Association of Manufacturers, has pointed out, "Controls that interrupt U.S. trade and commercial relations . . . strike at the ability of our economy to grow and provide employment."[8]

The long range costs of trade sanctions are even more sobering. The United States is alone in the Western world in the frequent use of trade sanctions as an instrument of foreign policy. With investments to protect, U.S. companies inevitably look for ways to assure uninterrupted trade. One way to do this is to locate manufacturing facilities outside the United States. The President's Export Council has foreseen this possibility and has warned that the present trend may be "an initial step in the abandoning of the United States as an export base."[9] If, in an attempt to halt the trend, sanctions are broadened to include U.S.-origin technology, the effect will be to shift research and development abroad.

WHAT ARE THE RISKS?

Primarily, sanctions against Eastern bloc countries are used as economic weapons to change political behavior. The risk is that sanctions might well have the opposite effect. The Soviet Union is the world's largest producer of oil and gas. Already the Soviets excel in several areas related to oil and gas technology, including shale oil technology, coal gasification, ferrous and nonferrous metallurgy, power engineering, polymer chemistry, lasers, and welding equipment. In spite of their poor reputation as innovators, the Soviets possess the ability to create new technology, as demonstrated by their space program. Sanctions may provide the spur necessary to force the Soviets to innovate in other areas as well. In fact, the process has already begun. One of the critical needs of the Soviet Union is for high compression turbines necessary to complete their pipeline. The Soviets wanted G.E. equipment. Yet, within three weeks of Washington's extension of the embargo in June, officials were declaring that Soviet versions of the high compression turbine had been checked out on the test benches at the Nevsky Zavod complex in Leningrad and found to be "superior in performance" to the equipment made with G.E. technology.[10] We would be wise, of course, to take official Soviet pronouncements with a grain or two of salt. Nevertheless, the report lends credence to the hypothesis that sanctions do spur technological development by providing incentives that otherwise would not exist.

There are other risks as well, including the risk of creating disruptive conflict among our allies. Such a conflict occurred in June of 1982 when the President imposed extraterritorial sanctions on U.S. subsidiaries manufacturing pipeline equipment in Europe. For example, Dresser France was caught between absolutely conflicting orders from two governments. The conflict quickly escalated to a matter of principle, with the U.S. insisting on its right to assert control outside its boundaries, while France and other nations defended themselves against what has been aptly described as "a questionable legal and extraterritorial lunge."[11] Similar lunges take place under the auspices of the Foreign Corrupt Practices Act, the Civil Rights Act of 1964, the Equal Employment Opportunity Act of 1972, antiboycott regulations, and other laws which may have intended or unintended extraterritorial consequences. One consequence of overreaching has been to weaken our leadership position among Western nations and to threaten the unity of the Atlantic Alliance. When extraterritorial pipeline sanctions were invoked, the French and Italian governments announced that their firms would honor existing contracts, Great Britain took steps to protect its trade interests, and the West Germans declared that they would proceed toward completion of the pipeline. Thus, as Kempton Jenkins, Vice President of Government Affairs for Armco has observed, "one of the historic foreign policy objectives of the Soviet Union, to erode and splinter the Western alliance, has been advanced by our own arbitrary action."[12]

Trade sanctions have been imposed in hopes of delaying the Soviet military buildup, thus enhancing U.S. national security. The assumption is that, through economic leverage, we can force the Soviets to divert some resources from military activities to prop up their consumer economy. But the economic lever pries both ways. One risk of export controls is that they will have a negative impact on our own economy and national security, hurting us more than they hurt the Soviet Union. The Soviets may re-deploy resources by fiat. They may choose, as has been observed, "to restrict civilian consumption, to enforce harsh internal discipline, and, under the slogans of an artificially stimulated siege mentality and unbridled nationalism, to arm and arm and arm, regardless of the cost."[13] In a democracy, however, a military buildup requires widespread assent. Trade sanctions depress the economy, limiting tax receipts and curbing our ability to afford new arms, which must be paid for either by raising taxes or charging the costs to the national debt. As the National Foreign Trade Council points out, our security is increasingly dependent on prosperity fueled by exports. We need a strong economy to provide the tax base necessary to support military spending in the interests of defense. Trade sanctions, however, undermine the national security by impairing the economic health of the United States.

WHAT ARE THE BENEFITS?

The fact that sanctions are imposed again and again in spite of their consistent failure to achieve stated objectives suggests that sanctions do have some benefits, though not the purported ones. Sanctions may be invoked in an attempt to appear firm and decisive when voters demand action. They may be imposed to signal displeasure with an adversary's behavior, or to punish the target country. Sanctions may be imposed to spur our allies to action or win political support by focusing attaention on an international problem. Experience suggests that they do not appreciably change the behavior of the target country.

THE ALTERNATIVES

In his recent study of economic sanctions published by Harvard Center for International Affairs, Robin Renwick has suggested that embargoes on imports are more effective than prohibitions on exports as a foreign policy instrument as distinguished from purely protectionist control.

Still another alternative is the credit weapon. The Soviet pipeline has been financed in part through easy credit supplied by Western European governments and banks. Loans made at discount rates amount to a kind of subsidy. We, and our allies, should sell the Soviets what they need and can pay for, national security items excepted, but we should not subsidize the purchase of our own commodities, whether grain or gas lift valves.

Why use economic weapons at all? It seems likely that the goal of recent U.S. sanctions has been to bring the Soviet economy to its knees, forcing a steep downward spiral in gross national product presumably of the kind experienced by the United States during the Great Depression. As Pierre Rinfret in Texas Business, has shown, the facts point to the conclusion that "the Reagan foreign policy is dedicated to creating economic, financial, and political conditions within the Soviet Union and its allies which will lead to internal dissent and revolution."[15] The underlying assumption is that revolutions are caused by hardship. But as the Council for a Competitive Economy points out, history indicates that "the Russian people are least likely to overthrow their rulers or replace their system with something better when they are economically deprived."[16] Instead, in the absence of markets, economic deprivation is likely to result in increased reliance on the power and resources of government. If we really want to pressure the Soviets to change their system we should practice free trade, which will raise the expectations of

Soviet citizens by creating the promise of more wealth.

RECOMMENDATIONS

It is proposed that the Export Administration Act be revised to limit Presidential authority under Section Six. The President would still have control over exports for purposes of national security but he would be restricted from exercising foreign policy controls without being subject to public hearing and due process reflecting Congressional intent. Congress would have the opportunity to prevent the adoption of foreign policy controls inconsistent with Congressional intent. We support this proposal.

We believe it is important that the Export Administration Act continue to be administered by the Department of Commerce. To establish a new entity such as proposed in Senate Bill 434, would likely increase the use of trade sanctions for foreign policy purposes. Senate Bill 397, however, is a constructive effort to imporve the Export Administration Act. It addresses some of our association's concerns in the areas we outline in this testimony, however, we also believe that it is not overly restrictive and would not unnecessarily impede presidential flexability which we feel should be subject to additional due process safegards.

In recognition of the importance of exports, the futility of unilateral sanctions, the risks involved in using them, and the costs of controls in terms of lost business, lost markets, and lost jobs, we recommend that the President's power to impose export controls for foreign policy purposes be limited to the most unusual circumstances, and be exercised only after a compelling show of effectiveness and need. We recommend that Congress limit the presidential use of retroactive controls, extraterritorial controls, and unilaterial sanctions without due process and congressional oversight.

****

Endnotes

[1] "Reforming the Export Administration Act," p. 3.

[2] Robert H. Coyle, "Statement, Robert H. Coyle, Caterpiller Tractor Company, Before the House Foreign Affairs Committee on Economic Policy and Trade, Subcommittee on Europe and the Middle East," 23 May 1982, p. 3.

[3] Harry J. Lawson, "Cooper Industries, Inc. Statement by Harry J. Lawson, Senior Counsel, Before the Export Administration Subcommittee," Washington, 30 Nov. 1982, p. 3.

[4] Interview with V. Rock Grundman, Government Business Affairs Council, Dresser Industries, Dallas, 8 March 1983.

[5] Albert Axebank, "U.S.-Soviet Union Trade Expectations Improve," *The Journal of Commerce*, 19 Nov. 1982, p. 3A.

[6] "Soviet Pipelines Hit Construction Mark," *Oil & Gas Journal*, 7 March 1983, p. 44.

[7] Lawson, p. 7.

[8] Alexander B. Trowbridge, "Statement of Alexander B. Trowbridge on U.S. Foreign Policy Controls on Exports Before the Committee on Foreign Relations of the United States Senate," Washington, 31 Aug. 1982, p. 6.

[9] Samuel P. Hintington, "Trade Technology and Leverage: Economic Diplomacy," *Foreign Policy*, No. 2, fall, 1978, p. 71, as quoted in J. V. James, "Extraterritorial Application of United States Law: A Chief Executive Officer's View: J. V. James, Chairman and Chief Executive Officer, Dresser Industries, Inc.," Tuscon, Arizona, 15 Jan. 1983, p. 9.

[10] John F. Burns, "Soviet Orders Speedup on Pipeline," Business Section, *The New York Times*, 23 Aug. 1982, p. 29.

[11] Kempton B. Jenkins, "Response of the Soviets to Economic Pressure: Testimony of Kempton B. Jenkins (Vice President, Govt. Affairs, Armco) before the Senate Committee on Foreign Relations," Washington, 12 Aug. 1982. p. 10.

[12] Jenkins, p. 10.

[13] Seweryn Bialer and Joan Afferica, "The Bear Doesn't Dance to Our Tune," *The New York Times*, 12 Dec. 1982, p. E19.

[14] Robin Renwick, *Economic Sanctions*, Harvard Studies, Center for International Affairs, No. 45 (Cambridge, Massachusetts: Harvard University Center for International Affairs, 1981), p. 80.

[15] "No Peace, No War," *Texas Business*, December 1982, p. 88.

[16] Richard W. Wilke, "Economic 'Warfare' Raises Fundamental Issues," *Executive Commentary* (Washington, D.C.: Council for a Competitive Economy), 1 July 1982, back page.

Selected Bibliography

Primary Sources

Hartland-Thunberg, Penelope. *The Political and Strategic Importance of Exports*. Washington, D.C.: The Center for Strategic and International Studies, Georgetown University, 1979.

Hewett, Ed A. "The Likely Effects of U.S. Economic Pressure on the Decisions Made by Soviet Leaders: Prepared Statement Submitted to the Senate Committee on Foreign Relations for its Hearing on Soviet Vulnerability to Economic Sanctions, 12-13 August 1982." Washington, D.C.: The Brookings Institution, 1982.

Jenkins, Kempton B. "Response to the Soviets to Economic Pressure: Testimony of Kempton B. Jenkins before the Senate Committee on Foreign Relations." Washington: 12 Aug. 1982.

Kiser, John W. III. "Tapping Eastern Bloc Technoloby." *Harvard Business Review*, March-April 1982, pp. 85-92.

Lawson, Harry J. "Cooper Industries, Inc. Statement by Harry J. Lawson, Senior Counsel, Before the Export Administration's Subcommittee, President's Export Council and Joint Business/Department of Commerce Hearing on the Export Administration Act of 1979." Cooper Industries, Inc., 1982.

"NFTC Export Administration Act Testimony, December 22, 1982, Attachement to Memorandum 4024." New York: National Foreign Trade Council, Inc., 1983.

"Reforming the Export Administration Act: Draft 1/20/83." New York: Business Roundtable Task Force on International Trade and Investment, 1983.

Renwick, Robin, *Ecomonic Santions*. Cambridge, Massachusetts: Harvard University Center for International Affairs, 1981.

Trowbridge, Alexander B. "Statement of Alexander B. Trowbridge on U.S. Foreign Policy Controls on Exports Before the Committee on Foreign Relations of the United States Senate, August 13, 1982.

Wilcke, Richard W. "Economic 'Warfare' Raises Fundamental Issues," *Executive Commentary*. Washington, D.C., Council for a Competitive Economy, 1 June 1982.

U.S. Cong. House. *Export Administration Act of 1979*, *Public Law 96-72*, *(S. 737*: 29 September 1979, pp. 93 Stat. 503-536.

Grundman, V. Rock. "Public Hearing on Export Policy and The Export Administration Act of 1979, Remarks of V. Rock Grundman for Dresser Industries, Inc." Dallas, Texas: 30 November 1982.

Grundman, V. Rock. "The New Imperialism: The Extraterritorial Application of United States Law." *The Economist*, 20 Aug. 1977.

Gwertzman, Bernard. "C.I.A. Says Soviet Can Almost Do Without Imports." *The New York Times*, 9 January 1983.

"Halliburton and U.S. Trade Policy." Dallas, Halliburton Company, Draft 30 December 1982.

Harbin, John P. Letter to The Honorable Robert C. McFarlane, 5 March 1982.

Hewett, Ed A. "The Costs and Benefits of Economic Sanctions." Presented to the Workshop on the Premises of East-West Commercial Relations, U.S. Capitol." Washington, D.C., 14 December 1982.

Hewett, Ed A., "The Pipeline Connection: Issues for the Alliance." *The Brookings Review*, fall 1982, pp. 15-20.

James, J.V. "Extraterritorial Application of United States Law: A Chief Executive Officer's View." Tuscon, Arizona: 15 January 1983.

James, John V. "Report of John V. James, Chairman, Task Force on Extraterritorial Application of U.S. Law of the Incentives/Disincentives Subcommittee of the President's Export Council." 19 July 1982.

Kahn, Peter L. "Squeezing the Soviets." *Foreign Service Journal*, February 1982, pp. 25-29.

"Keep a Counter-Punch." *The Economist*, 30 October 1982.

Kukucheck, George S. "Oral Statement of George Kukucheck, Vice President, Engineering and R&D, Vetco Offshore Inc. Before the Joint Business-Commerce Hearings on the Export Administration Act of 1979." Los Angeles, California: 8 December 1982.

Lambsdorff, Otto, Graf. "Trade Policy Challenges of Today" *Vital Speeches of the Day*. 15 April 1981, pp. 442-445.

Laqueur, Walter. "What We Know About the Soviet Union." *Commentary*, February 1983, pp. 13-21.

Luter, Edward R. "The Tobago Syndrome: The Extraterritorial Application of U.S. Laws and its Impact on International Trade."

"Memorandum: Review of Options for Modifying Foreign Policy Controls on U.S. Exports." National Association of Manufacturers, Washington, D.C.: 1 October 1982.

Murphy, John F., and Arthur T. Downey. "National Security, Foreign Policy and Individual Rights: The Quandary of United States Export Controls," *International and Comparative Law Quarterly*. October 1981, pp. 791-825.

Murphy, J. J. "Remarks of J. J. Murphy, Executive Vice President, Dresser Industries, Inc. Before the Annual Meeting, Society of American Business and Economic Writers." Dallas, Texas: 6 May 1980.

"National Foreign Trade Council, Inc." *Export Administration Act Testimony*. Draft. 4 January 1983.

Owen, David. "Ramarks by the Right Honorable Dr. David Owen, M. P., to the Council on Foreign Relations." New York City, 8 Nov. 1982, p. 2.

Rinfret, Pierre A. "No Peace, No War." *Texas Business*, December 1982.

Rosenbaum, Michael. "Soviet Technology May Benefit U.S. Firms." *Journal of Commerce*, 13 January 1983.

"Russian Trade Sanctions." *Swabbings: Petroleum Equipment Suppliers Association*. Volume XXXVI No. 19, 5 October 1982.

Sallans, William J. "Statement of William J. Sallans, Executive Vice President, Petroleum Equipment Suppliers Association at Public Hearing on Export Policy and Export Administration Act of 1979, U.S. Department of Commerce." Los Angeles, California: 8 December 1982.

Stein, Herbert, "Statement of Herbert Stein, The American Enterprise Institute and The University of Virginia, to Committee on Foreign Relations, United States Senate." 13 August 1982.

"The Pipeline Episode." Editorial. *The Wall Street Journal*, 16 November 1982.

"Threat of a Trade War Rises as Recession Spurs Competition, Nations Impose Curbs." *The Wall Street Journal*. 17 November 1982.

Trowbridge, Alexander B. Letter to the President. 11 August 1982.

"When the Pipeline Row is Over." *The Economist*. 30 October 1982.

"U.S. Embargo of Yamal Gas Line Damages West More Than Soviets." Editorial. *Oil & Gas Journal*, 18 Oct. 1982.

Compilation of Non–U.S. Manufacturers of Petroleum Equipment

August 1982

TABLE OF CONTENTS

Non–U.S. Manufacturers of Petroleum Equipment by: Pages

Product Category 1 - 96
Country of Origin 97 - 110
Addendum to Product Category A-1
Addendum to Country of Origin B-1
Addendum to Country of Origin - Alphabetical Listing C-1

N.B. The efficacy of an embargo is a function of the degree of availability of the items embargoed. For all too long, there has existed a lack of information regarding the foreign availability of petroleum equipment. The list which follows is not meant to be taken as complete or exhaustive. In enumerating more than 800 companies capable of producing more than 2,000 product categories similar to those available from U.S. based producers, it becomes apparent that the effectiveness of any program of product denial can not hope to be effective. It should be noted that no U.S. owned or controlled plants were knowingly included in these lists.

PETROLEUM EQUIPMENT SUPPLIERS ASSOCIATION
9225 Katy Freeway, Suite #401
Houston, Texas 77024

ABSORBERS - Glycol Dehydrator:

Adamson & Hatchett
Creusot-Loire/Pressure Vessels Div.
C. Goldhan
Robert Jenkins Oil & Gas
Phoceenne De Metallurgie
Siirtec

ABSORBERS - Power:

Dowty Offshore Ltd.

ABSORBERS - Shock, Drilling:

Cougar Tool
Griffith Oil Tool, Ltd.
Offshore Drilling Supplies, Ltd.
Sigma Chemie Ltd.

ABSORBERS - Shock, Vibration:

BTR Silvertown, Ltd.
Sigma Chemie Ltd.
T. I. Group

ACCELEROMETERS:

Ferranti Ltd.

ACCUMULATORS:

Creusot-Loire/Pressure Vessels Div.
Porta-Test Mfg. Ltd.

ACCUMULATORS - Hydraulic:

Automotive Products Ltd.
BTR Silvertown, Ltd.
Brisco Engineering, Ltd.
Dowty Offshore, Ltd.
Hydraudyne B. V.
Industrialexportimport
Rotator Norway

ACID - Inhibited Hydrochloric:

Chemische Fabriek Servo
Servecio Hydrocarb

ACID - Well Stimulation:

Chemische Fabriek Servo
Servecio Hydrocarb

ACTUATORS - Differential Pressure:

Kurt Kohorn, Ltd.

ACTUATORS - Valve:

Alfred Wirth & Co. KG
Automotive Products, Ltd.
Barber Industries, Ltd.
Costruzioni Hydro-Pneumatic
France Operator
GEC-Elliott Control Valves, Ltd.
Kurt Kohorn, Ltd.
Lanzagorta/FIP
Rotator Norway
Saut Du Tarn
Serck Audco Valves

ADAPTERS - Bottom Hole Test:

Canada Works
Lanzagorta/FIP

ADAPTERS - Flanged:

Breda Fucine
Canada
Lanzagorta/FIP

ADAPTERS - Packoff:

Canada
Canada Works
Lanzagorta/FIP
Venequela Oil Tool

ADAPTERS - Tubing Head:

Breda Fucine
Canada
Lanzagorta/FIP

ADAPTERS - Wellhead:

Breda Fucine
Canada
Lanzagorta/FIP
Van Der Horst

ADDITIVES - Drilling Mud:

Anchor Drilling Fluids A/S
CECA 1
Hercules France S.A.
Hoechst AG
Norsk Hydro
Sachtleben Chemie
Scholten
Sigma Chemie, Ltd.

ADDITIVES - Fracturing Fluids:

Hoechst AG
Servecio Hydrocarb
Sigma Chemie, Ltd.

ADSORBERS:

Adamson & Hatchett
Creusot-Loire/Pressure Vessels Div.

ADSORBERS - Dry Desiccant:

Robert Jenkins Oil & Gas
Sigma Chemie, Ltd.

AGENTS - Anti-Foaming:

Anchor Drilling Fluids A/S
CECA II

Chemische Fabriek Servo BV
Sigma Chemie, Ltd.

AGENTS - Cement:

CECA I
Sigma Chemie, Ltd.

AGENTS - Cleaning:

Chemische Fabriek Servo BV
Sigma Chemie, Ltd.
Unitor Ships Services

AGENTS - Foaming:

CECA I
Chemische Fabriek Servo
Sigma Chemie, Ltd.

AGENTS - Friction Reducing for Oil, Water, Acid:

Anchor Drilling Fluids A/S
CECA I
Sigma Chemie, Ltd.

AGENTS - Surface-Tension Reducing:

Anchor Drilling Fluids A/S
CECA I
CECA II
Chemische Fabriek Servo
Sigma Chemie, Ltd.

AGENTS - Temporary Plugging or Diverting:

CECA I
Sigma Chemie, Ltd.

AGENTS - Water Control:
Anchor Drilling Fluids A/S
Chemische Fabriek Servo BV
Hoechst AG
Sigma Chemie, Ltd.
Unitor Ships Services

AGITATORS:

Bharat Heavy Electricals, Ltd.
Dreco, Ltd.

AIDS - Navigation:

Ferranti, Ltd.
Thomson - CSF AVS

AIR CONDITIONING - Equipment:

G K N Group
Unitor Ships Services

ALARMS - Flow:

Barber Industries, Ltd.
Rognon S. A.
Samega

ALARMS - Level:

Barber Industries, Ltd.
C. Goldhan
Samega

ALARMS - Lost Circulation:

Samega

ALLOYS - Abrasion & Corrosion Resisting:

Compagnie
Sandvik AB
Vallourec Export

ALTERNATORS:

Bharat Heavy Electricals, Ltd.
Elektro Union Offshore A/S
GEC Machines
Rognon S.A.

AMPLIFIERS - Parametric:

Ferrenti, Ltd.

ANALYSIS - Reservoir:

Basset-Bretagne-Loire
Flopetrol
Geomecanique
Tesel Services, Ltd.

ANCHORS - Casing Pump:

Ceria B
S.B.S.

ANCHORS - Dead Line:

Ceria
Dreco, Ltd.

ANCHORS - Earth, Guy Wire, Rock:

Ceria

ANCHORS - Hold Down:
Bolland & Cia
A/S Raufoss
S.B.S.
Vereinigte Edelstahlwerke
ANCHORS - Insert Pump:
Bolland & Cia
S.B.S.
Vereinigte Edelstahlwerke
ANCHORS - Multiple String:

Bruce International
Venezuela Oil Tool

ANCHORS - Offshore Embedment:

A/S Raufoss
Bruce International
G K N Group
Hamanaka Chain Mfg. Co., Ltd.
Irgens Larsen A.S.
Linnenbank International, Inc.

ANCHORS - Tubing:
Geomecanique
Venezuela Oil Tool
Vivalo
ANODES:

G K N Group

ANTENNAS:

Thomson - CSF AVS

APPARATUS - Breathing, Underwater:

Comex Industries
Unitor Ships Services

ARRESTORS - Flame:

C. Goldhan
Unitor Ships Services

ASSEMBLES - Wellhead Injection:

Lanzagorta/FIP

ATTACHMENTS - Sucker Rod, On & Off
Bolland & Cia
Canada
Ceria B
S.B.S.
ATTACHMENTS - Tubing Head:

Lanzagorta/FIP

BACTERICIDES:

Anchor Drilling Fluids A/S
Chemische Fabriek Servo
Sigma Chemie, Ltd.
Unitor Ships Services

BAILERS - Hydrostatic:

Flopetrol

BALANCERS - Mud:

Anchor Drilling A/S
Kingston Instrument Co., Ltd.

BALLAST UNITS:

Anchor Drilling Fluids A/S
Ateliers et Chanteirs de Bretagne

BALLS & SEATS:
Bolland & Cia
S.B.S.
Vereinigte Edelstahlwerke
BANDS - Protective, Tool Joint:

Lion Oil Tool

BANDS - Wire Rope & Cable:

G K N Group

BARGES:

Ateliers et Chanteirs de Bretagne

BARITES:

Anchor Drilling Fluids A/S
CECA I
Edemsarda SpA
Norcem
Sachtleben Chemie

BARRELS - Core, Diamond:

Diamant Boart S.A.
J. K. Smit & Sons

BARRELS - Core, Rotary:

Diamant Boart S.A.
Industrialexport

BARRELS - Core, Wire Line:

Ceria
Diamant Boart S.A.
Tesel Services, Ltd.

BARRELS - Working:

Diamant Boart S.A.

BARS - Hollow Rod:

G K N Group

BARS - Sinker:

Flopetrol
Friedrich Leutert GmbH & Co.
Massarenti
Venezuela Oil Tools

BARS - Steel:

G K N Group
Sandvik AB
T. I. Group

BASKETS - Bridging:

Sea Oil Services, Ltd.

BASKETS - Cementing:

J. Caslake, Ltd.
Sea Oil Services, Ltd.

BASKETS - Fishing, Cone, Junk, Magnetic, Etc:

Drillcon Industries, Ltc.
Equipetrol S.A.
Offshore Drilling Supplies Limited
Sea Oil Services, Ltd.
Tesel Services, Ltd.
Vereinigte Edelstahlwerke AG

BASKETS - Reverse Circulating

Offshore Drilling Supplies Limited
Unitor Ships Services

BATTERIES - Offshore:

Dowty Offshore, Ltd.

BEACONS - Navigational:

Thomson - CSF AVS
Thomson - CSF (DASM)
Unitor Ships Services

BEAMS - Walking:

Salzgitter Maschinen

BEANS - Flow, also see Chokes:

Brisco Engineering, Ltd.
Canada
Kingston Instrument Co., Ltd.
Lanzagorta/FIP

BELL - Diving:

Comex Industries

BELL - Observation, Subsea:

Comex Industries

BELTS - Derrick Safety:

Hendrik Veder
Offshore Drilling Suppliers Limited

BELTS - Rubber

Arntz-Optibelt-KG
Colmant Cuvelier
Fenner & Co., Ltd., J.H.
Industrie Pirelli S.p.A.
Kleber-Colombes
Mitsuboshi Belting, Ltd.

BELTS - Rubber (contd.)

Moller-Werke GMBH
Peter-BTR, Gummiwerke AG
Roulunds Fabriker, Ltd.
Semperit Aktiengesellschaft
Trelleborg, Inc.
Wigglesworth & Co., Ltd.,

BELTS - Vacuum Filter:

CECA I
Edemsarda SpA
Hercules France S.A.

BINDERS - Load:

Ansell, Jones & Co., Ltd.

BITS - Big Hole:

Industrialexport
SMFI/Creusot-Loire
Salzgitter
Sea Oil Services, Ltd.

BITS - Carbide Insert:

Industrialexport
Okgt
SMFI/Creusot-Loire
Sea Oil Services, Ltd.
Tsukamoto Seiki Co. Ltd.
BITS - Core:

Cristal Profor S.A.
Diamant Boart S.A.
Drilling & Service
Industrial & Mining Bit Mfg.
SMFI/Creusot-Loire
Sea Oil Services, Ltd.
J. K. Smit & Sons

BITS - Diamond:

Cristal Profor S.A.
Diamant Boart S.A.
Drilling & Service
Industrial & Mining Bit Mfg.
SMFI/Creusot-Loire
Sea Oil Services, Ltd.
J. K. Smit & Sons
Tsukamoto Seiki Co., Ltd.

BITS - Directional:

Diamant Boart S.A.
Drilling & Service

BITS - Directional (contd.)

Okgt
SMFI/Creusot-Loire
Sea Oil Services, Ltd.
J. K. Smit & Sons
Tsukamoto Seiki Company

BITS - Down Hole Motors:

Diamant Boart S.A.
J. K. Smit & Sons

BITS - Expanding:

Diamant Boart S.A.
Okgt

BITS - Jet:

Drilling & Service
SMFI/Creusot-Loire
Sea Oil Services, Ltd.
Tsukamoto Seiki Company

BITS - Mining:

Diamant Boart S.A.
Drilling & Service
Industrial & Mining Bit Mfg.
Sea Oil Services, Ltd.
J. K. Smit & Sons
Tsukamoto Seiki Company

BITS - Percussion:

SMFI/Creusot-Loire

BITS - Rotary

Cristal Profor S.A.
Diamant Boart S.A.
Drilling & Service
Fabriven De Venezuela
Industrialexport
Norsea A/S
SMFI/Creusot-Loire
Sea Oil Services, Ltd.
Tsukamoto Seiki Company

BITS - Rotary and Drag:

Creusot-Loire
Diamant Boart S.A., Machine Div.
Intreprinderia "1 Mai"
Sekiyu Sakuseiki Seisaku K. K.
Tsukamoto Seiki Company, Ltd.

BITS - Steel Tooth Type:

Industrialexport
SMFI/Creusot-Loire
Tsukamoto Seiki Company
Unitor Ships Service A/S

BLADES - Drill Bit:

Diamant Boart S.A.

BLADES - Stabilizer & Reamer:

Diamant Boart S.A.
Griffith Oil Tool, Ltd.
Lion Oil Tool
Offshore Drilling Suppliers Limited
C. H. Taylor & Co., Ltd.
Tsukamoto Seiki Company

BLOCK-HOOKS:

Ansell, Jones & Co., Ltd.
Bharat Heavy Electricals, Ltd.
Hendrik Veder
Industrialexport
Lanzagorta/CM
Vereinigte Edelstahlwerke AG

BLOCKS - Brake:

Offshore Drillling Supplies Limited
Vereinigte Edelstahlwerke AG

BLOCKS - Crown:

Ansell, Jones & Co., Ltd.
Lanzagorta/CM
Olympic Ironworks, Ltd.

BLOCKS - Floor:

Ansell, Jones & Co., Ltd.
Flopetrol

BLOCKS - Gin Pole:

Ansell, Jones & Co., Ltd.
Flopetrol
Griffith Oil Tool, Ltd.

BLOCKS - Lead Impression:

Flopetrol
Lion Oil Tool

BLOCKS - Snatch:

Ansell, Jones & Co., Ltd.
Bharat Heavy Electricals, Ltd.
Hendrik Veder

BLOCKS - Traveling:

Ansell, Jones & Co., Ltd.
Bharat Heavy Electricals, Ltd.
Blohm & Voss AG
Industrialexport
Lanzagorta/CM
Rauma-Repola Oy, Pori Works
Tri-Service Machine, Ltd.
Unitor Ships Service AS

BLOCKS - Tubing:

Ansell, Jones & Co., Ltd.

BLOCKS - Wire Line:

Ansell, Jones & Co., Ltd.
Ceria
Hendrik Veder
Industrialexport

BOATS - Tug, Tow, Crew, Cargo, Etc.:

Ateliers et Chanteirs de Bretagne

BOLTS - Alloy Steel, Etc.:

Doncasters Moorside, Ltd.
Elkem-Spigerverket A/S
G K N Group

BOLTS - Hydraulically Operated:

Doncasters Moorside, Ltd.
G K N Group

BOWLS - Casing:

Sea Oil Services, Ltd.

BOXES - Stuffing, Pipe:
Bolland & Cia
Canada
Flopetrol
Seaco
Suplidora Nacional CA
BOXES - Stuffing, Tubing:
Bolland & Cia
Canada
Seaco
Suplidora Nacional CA

BRAKES - Air, Drilling Rig:

T. I. Group
Vereinigte Edelstahlwerke AG

BRAKES - Disc:

Pusnes Mekaniske Verksted
T. I. Group

BRAKES - Drawworks, Fluid:

T. I. Group

BRAKES - Pneumatic:

Renold, Ltd.
T. I. Group

BRAKES - Winch:

Ceria
T. I. Group

BREAKERS - Bit:

Diamant Boart S.A.
Lion Oil Tool
Sea Oil Services, Ltd.

BREAKERS - Circuit:

Elektro Union Offshore A/S

BREAKERS - Pneumatic:

Atlas Copco AB

BRUSHES - Wire:

Unitor Ships Service A/S

BUOYS:

Ateliers et Chanteirs de Bretagne
Irgens Larsen A.S.

BUOYS - Seismic:

Dowty Offshore, Ltd.

BURNERS - Crude Oil:

Flopetrol
Porta-Test Systems, Ltd.

BURNERS - Offshore Oil:

Flopetrol

BURNERS - Production Testing:

Flopetrol
Porta-Test Systems, Ltd.

BUSHINGS - Casing Head:

Lanzagorta/FIP

BUSHINGS - Kelly:

Industrialexport

BUSHINGS - Master:

Bharat Heavy Electricals, Ltd.
Industrialexport

CABLE - Electrical:

Elektro Union Offshore A/S
Jeumont-Schneider
North Sea Exploration Services

CABLE - Electrical Handling Equipment:

Dowty Offshore, Ltd.
Societa Cavi Pirelli

CAGES - Sub-Surface Pump:

Vereinigte Edelstahlwerke

CALIPERS - Casing & Tubing:

SMFI/Creusot-Loire

CALIPERS - Open Hole:

Tesel Services, Ltd.

CAMERAS - Underwater:

North Sea Exploration Services

CAPSTANS - Electric:

Ceria
Clarke Chapman, Ltd.
Wharton Engineers

CAPSULES - Survival Offshore:

Comex Industries

CARBOXYMETHYLCELLULOSE:

CECA I
Hoechst AG
Scholten

CARRIERS - Blowout Preventers:

Ceria
A. S. Normar

CASING - Electric Weld:

Hamblin & Glover Oilfield Services, Ltd.
Hoesch Roehrenwerke
Nippon Kokan
Offshore Drilling Supplies Limited
Sumitomo Metal Industries
United Casing Steel & Pipe, Ltd.
Unitor Ships Services A/S

CASING - Fiberglass:

Hamblin & Glover Oilfield Services, Ltd.
Sepma

CASING - Flush Joint

The Algoma Steel Corp.
Hamblin & Glover Oilfield Services, Ltd.
Nippon Steel Corp.
Vallourec Export

CASING - Integral Joint:

The Algoma Steel Corp.
British Steel Corp.
Dalmine
Hamblin & Glover Oilfield Services, Ltd.
Mannesmannrohren-Werke
Nippon Steel Corp.
Vallourec Export

CASING - Oil & Gas Well:

The Algoma Steel Corp.
British Steel Corp.
Dalmine
G K N Group
Hamblin & Glover Oilfield Services, Ltd.
Hoesch Roehrenwerke
Kawasaki Steel Corp.
Mannesmannrohren - Werke

CASING - Oil & Gas Well: (contd.)

Nippon Kokan
Offshore Drilling Suppliers Limited
Sumitomo Metal Industries
Vallourec Export

CASING - Shot Hole:

British Steel Corp.
Hamblin & Glover Oilfield Services, Ltd.
Nippon Steel Corp.

CASING - Slip Joint:

Dalmine
Hamblin & Glover Oilfield Services, Ltd.

CASING - Spiral Grooved:

Hamblin & Glover Oilfield Services, Ltd.

CASING - Spiral Welded:

Hamblin & Glover Oilfield Services, Ltd.
Hoesch Roehrenwerke
Nippon Steel Corp.

CATCHERS - Junk:

Offshore Drilling Suppliers Limited
Tesel Services, Ltd.
Venezuela Oil Tool

CATWORKS:

Lanzagorta/CM

CELLS - Calibrating:

Flopetrol

CEMENT - Gel:

CECA I

CEMENT - Gypsum:

CECA I

CEMENT - High Density:

CECA I

CEMENT - Low Water Loss:

CECA I

CEMENT - Low Density:

CECA I
Italcementi

CEMENT - Well, Retarded:

CECA I
Italcementi
Norcem

CEMENTING - Equipment:

CVB Industrial Metanica
Equi-Petrol

CEMENTING-LINER:

Sea Oil Services, Ltd.

CEMENTING - Turbulent Flow:

Sea Oil Services, Ltd.

CENTRALIZERS - Casing:

J. Caslake, Ltd.
Offshore Drilling Suppliers Limited
Regal Industrial Rubber C.A.
Sea Oil Services, Ltd.
Silvio Ballerini & C.
Site Oil Tools, Ltd.

CENTRALIZERS - Contact:

Sea Oil Services, Ltd.

CENTRALIZERS - Directional Hole:

J. Caslake, Ltd.
Sea Oil Services, Ltd.

CENTRALIZERS - Drill Pipe:

Regal Industrial Rubber C.A.
Sea Oil Services, Ltd.

CENTRALIZERS - Liner:

J. Caslake, Ltd.
Regal Industrial Rubber C.A.
Sea Oil Services, Ltd.

CENTRALIZERS - Multiple String:

Sea Oil Services, Ltd.

CENTRALIZERS - Tubing:

J. Caslake, Ltd.
Regal Industrial Rubber C.A.
Sea Oil Services, Ltd.

CHAIN & SPROCKETS:

Amsted-Siemag Kette GmbH
Bharat Heavy Electricals, Ltd.
Compagnie Des Transmissions Mecaniques
Daido Kogyo Co., Ltd.
Ewart Chainbelt Co., Ltd.
Franz Kohmaier K.G.
Fulton Chain Co., Inc.
Tsubakimoto Chain Mfg. Co., Ltd.

CHAINS - Hoist & Drive:

Ceria
Hendrik Veder

CHAINS - Mooring:

Bulten-Kanthal AB
Hamanaka Chaim Mfg. Co., Ltd.
Japan Mechanical Chain Mfg. Co.
Ljusne (LW) Chain
Nippon Chain & Anchor Co., Ltd.
Norbrit-Pickering Limited
Vicinay, S.A.

CHAINS - Roller:

Amsted-Siemag Kette
Renald, Ltd.
Sedis Industrie

CHAINS - Spinning:

Offshore Drilling Supplies Limited

CHAMBERS - Hyperbaric:

Comex Industries

CHAMBERS - Recompression:
Comex Industries

CHART READERS:
Friedrich Leutert GmbH & Co.

CHARTS - Bottom Hole Pressure Guage:
Friedrich Leutert GmbH & Co.

CHEMICALS:
Empresos Mito Juan

CHEMICALS - Corrosion Inhibiting:
CECA I
CECA II
Hoechst AG

CHEMICALS - Corrosion Inhibiting (contd.)

Chemische Fabriek Servo
Unitor Ships Services A/S

CHEMICALS - Demulsifying:

Anchor Drilling Fluids A/S
CECA I
CECA II
Chemische Fabriek Servo
Hoechst AG
Unitor Ships Service A/S

CHEMICALS - Desalting:

Anchor Drilling Fluid A/S
CECA II
Chemische Fabriek Servo
Hoechst AG
Sigma Chemie, Ltd.

CHEMICALS - Formation Stabilizers:

CECA II
Hoechst AG

CHEMICALS - Hydrate Preventions:

Anchor Drilling Fluids A/S
Hoechst AG
Sigma Chemie, Ltd.

CHEMICALS - Mud Removal Dispersant:

CECA I

CHEMICALS - Paraffin Inhibitor:

CECA II
Chemische Fabriek Servo

CHEMICALS - Paraffin Removing:

CECA II
Chemische Fabriek Servo

CHEMICALS - Polymers:

Anchor Drilling Fluids A/S
CECA I
CECA II
Chemische Fabriek Servo BV
Hoechst AG
Scholten
Sigma Chemie, Ltd.

CHEMICALS - Scale Preventive:

CECA II
Chemische Fabriek Servo

CHEMICALS - Waterflood:

Chemische Fabriek Servo
Hoechst AG

CHOKES - Adjustable:

Breda Fucine
Canada
Kurt Kohorn, Ltd.
Lanzagorta/FIP

CHOKES - Automatic:

Kurt Kohorn, Ltd.

CHOKES - Bottom Hole:

Kurt Kohorn, Ltd.
Seaco

CHOKES - Heater:

Kurt Kohorn, Ltd.
Lanzagorta/FIP

CHOKES - Hydraulically Operated:

Brisco Engineering, Ltd.
Kurt Kohorn, Ltd.

CHOKES - Plug, Pumpdown:

Kurt Kohorn, Ltd.

CHOKES - Positive:

Breda Fucine
Canada
Lanzagorta/FIP

CHROMATOGRAPHS:

Samega

CLAMPS - Cable:

Ceria
United Ropeworks

CLAMPS - Casing:

J. Caslake, Ltd.

CLAMPS - Deadline Anchor:

Ceria

CLAMPS - Pipe:

Creusot-Loire Energie Developments
Hydraudyne B.V. & Phoceenne De Metallurgie
Kurt Kohorn, Ltd.

CLAMPS - Pipe Repair:

Ceria
Kurt Kohorn, Ltd.
Phoceenne De Metallurgie

CLAMPS - Polished Rod:

Ceria B

CLAMPS - Safety:

Vereinigte Edelstahlwerke

CLAMPS - Tubing:

T. I. Group

CLAMPS - Wireline:

Ceria
United Ropeworks

CLEANERS - Cold Water:

Unitor Ships Service A/S

CLEANERS - Detergent:

Chemische Fabriek Servo
Unitor Ships Service A/S

CLOCKS - Bottom Hole Gage:

Friedrich Leutert GmbH & Co.

CLOTHING - Coveralls, Pants, Shirts, Jackets:

Unitor Ships Service A/S

CLUTCHES - Air Actuated:

Renold, Ltd.
T. I. Group

CLUTCHES - Friction:

T. I. Group

CLUTCHES - Hydraulic:

T. I. Group

CLUTCHES - Mechanical:

T. I. Group

COATINGS - Drill Pipe:

Hoechst AG

COATINGS - Pipe Protective:

CECA II
Hoechst AG
Hoesch Roehrenwerke

COATINGS - Plastic:

Mannesmannrohren-Werke

COATINGS - Thread:

Unitor Ships Service A/S

COATINGS - Tubing:

Sofresid

COCKS - Kelly:

Hermann von Rautenkranz, Internationale Tiefbohr GmbH & Co., KG, ITAG
Offshore Drilling Suppliers Limited
SMF International, Group Creusot-Loire

COLLARS - Baffle:

Sea Oil Services, Ltd.
Site Oil Tool, Ltd.

COLLARS - Casing Fill-Up:

Equipetrol S.A.
Sea Oil Services, Ltd.
Site Oil Tool, Ltd.

COLLARS - Cementing:

Sea Oil Services, Ltd.

COLLARS - Die:

Sea Oil Services, Ltd.

COLLARS - Drill:

Breda Fucine
Equipetrol S.A.
G K N Group
Itag Celle
Lion Oil Tool
Offshore Drilling Supplies Limited
SMFI/ Marep
Sea Oil Services, Ltd.
C. H. Taylor & Co., Ltd.
Van Der Horst
Vereinigte Edelstahlwerke

COLLARS - Drill, Grooved:

Breda Fucine
SMFI/ Marep
Sea Oil Services, Ltd.
C. H. Taylor & Co., Ltd.
Vereinigte Edelstahlwerke

COLLARS - Drill, Large Diameter:

Breda Fucine
G K N Group
Lion Oil Tool
SMFI/Marep
Sea Oil Services, Ltd.
C. H. Taylor & Co., Ltd.

COLLARS - Drill, Spiral Grooved:

Breda Fucine
G K N Group
SMFI/Marep
Sea Oil Services, Ltd.
C. H. Taylor & Co., Ltd.
Vereinigte Edelstahlwerke

COLLARS - Drill, Square:

Breda Fucine
SMFI/Marep
Vereinigte Edelstahlwerke

COLLARS - Float:

Equipetrol S.A.
Sea Oil Services, Ltd.
Site Oil Tool, Ltd.

COLLARS - Formation Pack-Off:

Sea Oil Services, Ltd.

COLLARS - Side Opening:

Sea Oil Services, Ltd.

COLLARS - Stop:

J. Caslake, Ltd.

COLLARS - Substitute:

Lion Oil Tool
SMFI/Marep
Sea Oil Services, Ltd.
C. H. Taylor & Co., Ltd.

COLLARS - Survey, Non-Magnetic:

SMFI/Marep
Sea Oil Services, Ltd.
Vereinigte Edelstahlwerke

COLLARS - Tubing:

Sea Oil Services, Ltd.

COLUMNS - Fractionating:

Creusot-Loire/Pressure Vessels Div.
Motherwell Bridge Group

COMPENSATORS - Crane Load:

Ateliers et Chanteirs De Bretagne
Ceria
Hydraudyne B.V.

COMPENSATORS - Motion, Floating Drilling Vessels:

Ateliers et Chanteirs de Bretagne
GEC Mechanical Handling
Van Der Horst Asia Pte., Ltd.
Wharton Engineers

COMPLETIONS - Sub-Sea:

Ateliers et Chanteirs de Bretagne
Comex Seal
Flopetrol
Seaco
Site Oil Tools, Ltd.

COMPLETIONS - Wireline:

Flopetrol
Seaco

COMPOUNDS - Drawworks:

Industrialexport
Alfred Wirth & Co. KG

COMPRESSORS - Air:

Thomassen
Unitor Ships Service A/S

COMPRESSORS - Air Portable:

Atlas Copco AB
CECA I
Unitor Ships Service A/S

COMPRESSORS - Centrifugal:

Creusot-Loire Compressors
Thomassen
Unitor Ships Service A/S

COMPRESSORS - Gas:

Bharat Heavy Electricals, Ltd.
Creusot-Loire Compressors
Thomassen

COMPRESSORS - Gas Engine:

Creusot-Loire Compressors

COMPRESSORS - Integral:

Creusot-Loire Compressors
Thomassen

COMPRESSORS - Reciprocating:

Creusot-Loire Compressors
Thomassen
Unitor Ships Service A/S

COMPRESSORS - Rotary:

Atlas Copco AB
Thomassen

COMPRESSORS - Turbo:

Thomassen

COMPUTERS - Navigation:

Thomson - CSF AVS

COMPUTERS - Process:

Ferranti, Ltd.

CONDITIONERS - Mud:

CECA I
Hoechst AG
Industrialexport
Norsk Hydro

CONDITIONERS - Water:

CECA I

CONDUIT - Electrical, Coated:

T. I. Group
Uni-Tubes, Ltd.

CONNECTIONS - Clamp Type:

Kurt Kohorn, Ltd.

CONNECTORS - Choke & Kill Line Subsea:

Kurt Kohorn, Ltd.

CONNECTORS - Christmas Tree, Subsea:

Creusot-Loire Energie Development
Kurt Kohorn, Ltd.

CONNECTORS - Drill Collar:

Sea Oil Services, Ltd.
C. H. Taylor & Co., Ltd.

CONNECTORS - Electrical:

Klippon Electricals, Ltd.
Societa Cavi Pirelli

CONNECTORS - Electrical, Subsea:

Matra Offshore

CONNECTORS - Electrical, Subsea, Induction Type:

Comex Seal

CONNECTORS - Flowline, Subsea:

Comex Industries
Comex Seal
Paguag GmbH

CONNECTORS - Guideline Remote, Subsea:

Kurt Kohorn, Ltd.

CONNECTORS - Hydraulic, Subsea:

Hydraudyne B.V.
Matra Offshore

CONNECTORS - Mud Line:

Kurt Kohorn, Ltd.

CONNECTORS - Offshore Riser:

Adamson & Hatchett
Comex Industries
Kurt Kohorn, Ltd.

CONNECTORS - Pipe, Flexible:

Paguag GmbH
T. I. Group
Uni-Tubes, Ltd.

CONNECTORS - Riser, Subsea:

Comex Industries
Comex Seal

CONNECTORS - Threaded:

CBV
Equipement Petrolier
Hamblin & Glover Oilfield Services, Ltd.
Klampon Corp.
Kuroda Precision Industries, Ltd.
Niiquta Engineering Company
Vallourec Export
Vitro, S.A.

CONNECTORS - Tubing:

Hamblin & Glover Oilfield Services, Ltd.
Vallourec Export

CONNECTORS - Wellhead, Sub-Sea:

Kurt Kohorn, Ltd.
Thomson-CSF (DASM)

CONSTRUCTION - Offshore:

Creusot-Loire/Pressure Vessels Div.
Elektro Union Offshore A/S
Equipements Macaniques et Hydrauliques
Motherwell Bridge Group
North Sea Exploration Services
Sofresid

CONSULTANTS - Engineering & Planning:

Ateliers et Chanteirs de Bretagne
Comex Industries
Elektro Union Offshore A/S
Novelles Applications Technologiques
Seamore Oil & Gas Processing
Sofresid

CONTRACTORS - Electrical:

Elektro Union Offshore A/S
Holec
North Sea Exploration Services
Northern Rig Lites

CONTROLLERS - Pneumatic:

GEC-Elliott Control Valves, Ltd.
Impamex S.A.

CONTROLS - Acoustic:

BTR Silvertown, Ltd.
Dowty Offshore, Ltd.
Matra Offshore
Thomson-CSF (DASM)

CONTROLS - Automatic Drilling:

Elektro Union Offshore A/S

CONTROLS - Automation:

Brisco Engineering, Ltd.
Elektro Union Offshore A/S
Ferranti, Ltd.

CONTROLS - Automation (contd.)

GEC-Elliott Process Automation, Ltd.
Jeumont-Schneider
Matra Offshore
Rotator Norway A.S.
T. I. Group

CONTROLS - Blowout Preventer, Subsea:

Industrialexport
Matra Offshore
Norsea A/S

CONTROLS - Casing Pressure:

Samega

CONTROLS - Compressor:

Elektro Union Offshore A/S

CONTROLS - Digital:

Dowty Offshore, Ltd.
GEC-Elliott Process Automation, Ltd.
Matra Offshore

CONTROLS - Down Hole Blowout Preventer:

Matra Offshore

CONTROLS - Drawworks Feed:

Holec

CONTROLS - Electric Motor:

Brissonneau & Lotz Marine
Elektro Union Offshore A/S
Holec
Jeumont-Schneider
Sigmund Pulsometer Pumps
T. I. Group

CONTROLS - Engine Safety:

Barber Industries, Ltd.
Dowty Offshore, Ltd.
Sigmund Pulsometer Pumps

CONTROLS - Flow, Subsea:

Matra Offshore

CONTROLS - Gas:

GEC-Elliott Control Valves, Ltd.
F. D. Rasspe Sohne
Samega

CONTROLS - Hydraulic:

Automotive Products, Ltd.
Brissonneau & Lotz Marine
Bronzavia
Ceria
Dowty Offshore, Ltd.
Matra Offshore
Rotator Norway
Sigmund Pulsometer Pumps

CONTROLS - Hydraulic Pumping:

Dowty Offshore, Ltd.
Hydraudyne B.V.
Jeumont-Schneider

CONTROLS - Liquid Level:

Barber Industries, Ltd.
GEC-Elliott Control Valves, Ltd.
Samega

CONTROLS - Manifold, Valves:

Lanzagorta/FIP
Matra Offshore

CONTROLS - Pressure:

GEC-Elliott Control Valves, Ltd.
T. I. Group

CONTROLS - Process Equipment:

GEC-Elliott Process Automation, Ltd.
T. I. Group

CONTROLS - Pump:

Bronzavia
C G A/Alcatel
Samega
Sigmund Pulsometer Pumps

CONTROLS - Pumping, Hydraulic:

Ceria B
Dowty Offshore, Ltd.

CONTROLS - Temperature:

Samega
T. I. Group

CONTROLS - Vibration:

Dowty Offshore, Ltd.

CONTROLS - Water Quality:

Unitor Ships Service AS

CONTROLS - Weight:

Flopetrol
Samega

CONTROLS - Wellhead, Subsea:

Comex Seal
Matra Offshore

CONTROLS - Well Production Test:

Flopetrol
Matra Offshore

CONVERTERS - Torque:

Industrialexport

CONVEYORS - Bulk Material:

Industrialexport

CORDAGE - Manila, Sisal Jute & Synthetic:

Elkem-Spigerverket A/S
Hawkins & Tipson Ropemarkers
Hendrik Veder
United Ropeworks

CORING - Equipment Rental:

Diamant Boart S. A.

CORING - Service:

Diamant Boart S. A.
J. K. Smit & Sons

CORING - Subsea:

Geomecanique

CORING - Wireline:

Diamant Boart S.A.
United Ropeworks

COUNTERS - Pump Stroke:

Samega

COUNTERS - Rotary Table:

Samega

COUPLINGS - Casing:

British Steel Corp.
Dalmine
Hamblin & Glover Oilfield Services, Ltd.
Kuroda Precision Industries, Ltd.
Mannesmannrohren-Werke
Nippon Kokan
Sea Oil Services, Ltd.
Vallourec Export

COUPLINGS - Disconnect:

GEC Mechanical Handling
Gummi A/S K. Lund & Company

COUPLINGS - Drive Pipe:

Dalmine
Kurt Kohorn, Ltd.

COUPLINGS - Flow:

Breda Fucine
Dalmine

COUPLINGS - Fluid:

Industrialexportimport
Renold Power Transmission, Ltd.
Voith Getreibe

COUPLINGS - Geared:

Engrenages Et Reducteurs/Citroen-Messian
Rademakers
Voith Getreibe

COUPLINGS - Hose:

Arbarthorpe Oilfield Services, Ltd.
Atlas Copco AB
GEC Mechanical Handling
Gummi A/S K. Lund & Co.
Industrialexportimport

COUPLINGS - Hose (contd.)

Mento A/S
Paguag GmbH
T. I. Group
Unitor Ships Service AS

COUPLINGS - Hydraulic:

Gummi A/S K. Lund & Co.
Hi-Flex International, Ltd.
Hydraudyne B.V.
Unitor Ships Service AS
Voith Getriebe

COUPLINGS - Pipe:

British Steel Corp.
Hamblin & Glover Oilfield Services, Ltd.
Hydraudyne B.V.
Kawasaki Steel Corp.
Kurt Kohorn, Ltd.
Mannesmanrohren-Werke
Nippon Kokan
Paguag GmbH
Sandvik AB
Sea Oil Services, Ltd.
Sigma Chemie, Ltd.
T. I. Group
Unitor Ships Service AS
Vallourec Export

COUPLINGS - Polished Rod:

Ceria B
Industrialexportimport
Vereinigte Edelstahlwerke AG

COUPLINGS, PUP JOINTS, CONNECTORS:

Arai Iron Works Co., Ltd.
Awaji Sangyo K.K.
Canvil, Ltd.
Fukuda Kogyo Co., Ltd.
Hamblin Oilfield Services, Ltd.
Kashiwara Machine Mfg. Co., Ltd.
Kimura Yasaku Co., Ltd.
Kobayashigen Sangyo Co., Ltd.
Metalurgica Bellucci S.A.I.C.F.I.A.
Nippon KokanTsugite Kabushiki Kaisha
Oilfield Mfg. Pte., Ltd.
Oilfield Tubular Services Pte., Ltd.
R & D Machine, Ltd.
Reinhold Industries, Ltd.
Tamotsu Kogyo Kabushiki Kaisha
Tokiwa Industrial Co., Ltd.
Tokyo Kinzoku Kogyo K.K.

COUPLINGS, PUP JOINTS, CONNECTORS (contd.)

Toshin Kogyo Co., Ltd.
T. P. S. Industries, Ltd.
Tsujikawa Mfg. Co., Ltd.

COUPLINGS - Quick Disconnect:

GEC Machanical Handling
Gummi A/S K. Lund & Co.
Kurt Kohorn, Ltd.

COUPLINGS - Riser, Subsea:

Kurt Kohorn, Ltd.

COUPLINGS - Sucker Rod:

Ceria B
Dalmine
Drillcon Industries, Ltd.
Industrialexportimport
Kuroda Precision Industries, Ltd.
Sigma Chemie, Ltd.
Vereinigte Edelstahlwerke AG

COUPLINGS - Tubing:

British Steel Corp.
Drillcon Industries, Ltd.
Hamblin & Glover Oilfield Services, Ltd.
Kawasaki Steel Corp.
Kuroda Precision Industries, Ltd.
Mannesmannrohren-Werke
Nippon Kokan
Phoceenne De Metallurgie
Sandvik AB
Sigma Chemie, Ltd.
T. I. Group
Vallourec Export

COVERS - Hydraulic Cylinder:

Hydraudyne B.V.
Wirth Maschinen-Und-Bohrgerate-Fabrick

CRANES:

A/S Moelven Brug
Ceria
Clarke Chapman, Ltd.
Hydraulik Brattvaag
A. S. Norman
Nylands Verksted
Oil Industry Services AS
Olympic Ironworks, Ltd.
Phoceenne De Metallurgie

CRANES - Amphibious:

Ceria
Wharton Engineers

CRANES - Bridge:

Olympic Ironworks, Ltd.

CRANES - Deck:

A/S Moelven Brug
Brissonneau & Lotz Marine
Ceria
Clarke Chapman, Ltd.
Hydraulik Brattvaag
Skagit Corp.

CRANES - Derrick:

Clarke Chapman, Ltd.
A. S. Normar
Wharton Engineers

CRANES - Gantry:

A/S Moelven Brug
Ceria
Ethyd
A. S. Normar
Wharton Engineers

CRANES - Jib:

A/S Moelven Brug
Clarke Chapman, Ltd.
Hydraulik Brattvaag
Industrialexportimport
A. S. Normar
Verhoef Aluminum Scheepsbouwindustrie
Wharton Engineers

CRANES - Platform:

Goes International Petroleum Services
Pte., Ltd.

CROSSES - Flow:

Lanzagorta/FIP

CROSSES - Mud:

Breda Fucine
Offshore Drilling Supplies, Ltd.

CUPS - Hydraulic:

Lubrikup Co., Inc.

CUPS - Packer:

Industrialexportimport

CUPS - Pump Piston:

Sigma Chemie, Ltd.

CUPS - Seating:

Regal Industrial Rubber CA
S.B.S.
S.K.A.
Vereinigte Edelstahlwerke

CUPS - Swab:

Goes International Petroleum Services Pte., Ltd.
Phoceenne De Metallurgie
Regal Industrial Rubber CA
S,K,A,
Stabylia

CUPS - Valve:

Regal Industrial Rubber CA
S.B.S.
Vereinigt Edelstahlwerke

CUTTERS - Big Hole Bit:

Sea Oil Services, Ltd.

CUTTERS - Bottom Hole Jet:

Tesel Services, Ltd.

CUTTERS - Casing, Tubing & Drill Pipe:

Industrialexportimport
Kuroda Precision Industries, Ltd.
Offshore Drilling Supplies, Limited
Tesel Services, Ltd.

CUTTERS - Hydraulic, Underwater:

Hydraudyne B.V.

CUTTERS - Measuring Line:

Flopetrol

CUTTERS - Multi-String:

Tesel Services, Ltd.

CUTTERS - Pipe:

Tesel Services, Ltd.

CUTTERS - Wire Rope & Cable:

Flopetrol
Industrialexportimport
Unitor Ships Service AS

CYCLONES:

Industrialexport
Sigma Chemie, Ltd.
Thule United, Ltd.

CYLINDERS - Air:

France Operator
Hydraudyne B.V.
Pronal
P. D. Rasspe Sohne
Unitor Ships Service AS

CYLINDERS - Hydraulic:

Automotive Products, Ltd.
Dowty Offshore, Ltd.
Ethyd
France Operator
G K N Group
Hydraudyne B.V.
Kurt Kohorn, Ltd.
P. D. Rasspe Sohne
Rotator Norway
Sandvik AB
Saut Du Tarn
Van Der Horst Asia Pte., Ltd.
Alfred Wirth & Co., KG

DAMPENERS - Pulsation:

Goes International Petroleum Service Pte., Ltd.
Offshore Drilling Supplies, Ltd.
Wirth Maschinen-Und Bohrgerate-Fabrick
Alfred Wirth & Co. KG

DAMPERS - Vibration, Shock:

BTR Silvertown, Ltd.
Dowty Offshore, Ltd.
Hydraudyne B.V.
Sigma Chemie, Ltd.

DECK MACHINERY - Marine Drillship and Workboat:

A. S. Bergens Mekaniske Verk
Brissonneau & Lotz Marine

DECK MACHINERY - Marine Drillship and Workboat (contd.)

Ceria
Clarke Chapman, Ltd.
Hydraulik Brattvaag
Wharton Engineers

DECKS - Landing:

A/S Raufoss
New-Mar Oil Services, Ltd.
Norseman Shelters, Ltd.
Oil Industry Services AS
Sigma Chemie, Ltd.

DAVITS - Single Fall, Survival Systems:

Ceria
Wharton Engineers

DECKING - Steel:

Redpath Dorman Long
T. I. Group

DE-FOAMERS:

Anchor Drilling Fluids A/S
CECA S.A.

DE-GASSERS - Mud:

Dreco, Ltd.
Industrialexport
Itag
Samega

DE-GASSERS - Sea Water:

Offshore Drilling Supplies, Ltd.
Serck Baker

DEHYDRATORS - Crude Oil:

Golden Olfeddausrustungen
Robert Jenkins Oil & Gas, Ltd.

DEHYDRATORS - Gas:

Creusot-Loire Pressure Vessels Div.
C. Goldhan
Golden Olfeddausrustungen
Robert Jenkins Oil & Gas
Porta-Test Mfg., Ltd.
Siirtec

DENSIMETERS:

C G A/Alcatel
Samega

DEPTHOMETERS:

Flopetrol
Friedrich Leutert GmbH & Co.
Kingston Instrument Co., Ltd.
Samega
Tesel Services, Ltd.

DERRICKS:

De Vries Robbe & Co., N.V.
Nuovo Pigone, S.p.A.
Oil Well Engineering Co., Ltd.
Waagner-Biro Aktiengesellschaft

DERRICKS - Dynamic:

Olympic Ironworks, Ltd.
Joseph Paris SA
Silvio Ballerini & C

DERRICKS - Floating:

Dreco, Ltd.
Olympic Ironworks, Ltd.
Joseph Paris SA

DERRICKS - Multiple Well:

Dreco, Ltd.
Industrialexport
Massarenti
Olympic Ironworks, Ltd.

DERRICKS - Portable:

Dreco, Ltd.
Industrialexport
Lanzagorta/CM

DERRICKS - Servicing:

Dreco, Ltd.
Industrialexport
Lanzagorta/CM
Massarenti
Olympic Ironworks Ltd.
Joseph Paris

DERRICKS - Stiffleg:

Lanzagorta/CM
Olympic Ironworks, Ltd.
Joseph Paris SA

DERRICKS - Telescoping:

Dreco, Ltd.
Lanzagorta/CM
Massarenti
Olympic Ironworks, Ltd.
Salzgitter Maschinen

DERRICKS - Tripod:

Joseph Paris SA

DESALTERS - Crude Oil:

Offshore Drilling Supplies, Ltd.

DESALTERS - Seawater:

Robert Jenkins Oil & Gas, Ltd.

DESANDERS - Mud:

Dreco, Ltd.
Industrialexport
Offshore Drilling Supplies, Ltd.
Sigma Chemie, Ltd.
Silvio Ballerini & C

DE-SCALERS:

Offshore Drilling Supplies, Ltd.

DE-SILTERS - Mud:

Dreco, Ltd.
Industrialexport
Offshore Drilling Supplies, Ltd.
Sigma Chemie, Ltd.
Thule United, Ltd.

DESURGERS - Pump:

Sigma Chemie, Ltd.

DESULFURIZERS:

Creusot-Loire/Pressure Vessels Div.

DETECTORS - Gas

Samega

DETECTORS - Hydrogen Sulfide:

Samega

DETECTORS - Loss Circulation:

Samega

DEVICES - Wire Line Measuring:

Ceria
Flopetrol
Western Hydraulic

DIES - Tong:

Arbarthorpe Oilfield Services, Ltd.
Offshore Drilling Supplies Limited
Vereinigte Edelstahlwerke

DIGITISERS:

Ferranti, Ltd.
Tesel Services, Ltd.

DIRECTORS - Gas:

C G A/Alcatel

DIVERTERS - B.O.P. Subsea:

Offshore Drilling, Ltd.

DOGS - Slip:

Vereinigte Edelstahlwerke

DOLLIES - Pipe:

Arbarthorpe Oilfield Services, Ltd.

DRAUGHTING - Equipment:

Ferranti, Ltd.

DRAWWORKS:

Bharat Heavy Electricals, Ltd.
Dreco, Ltd.
Industria Del Hierro, S.A. De C.V.
Industrialexport
Lanzagorta/CM
Massaranti
Offshore Drilling Supplies, Ltd.
Salzgitter Maschinen
Unitor Ships Service AG
Wharton Engineers
Alfred Wirth Co. KG
Wirth Maschinen-Und Bohrgerate-Fabrick

DRILLING - Air, Gas:

Industrialexportimport
Salzgitter Maschinen

DRILLING - Directional:

Alsthom-Atlantique, Neyrfor
Industrialexportimport

DRILLING - Reverse Circulation:

Industrialexport
Massarenti
Salzgitter Maschinen

DRILLING RIGS - Cable Tool:

Coventry Gauge, Ltd.
Steward Ross & Company, Ltd.
Stow Engineering Company Ltd.
Tru-Thread, Ltd.

DRILLS - Air:

Atlas Copco AB
Unitor Ships Service

DRILLS - Core:

Diamant Boart S.A.
J. K. Smit & Sons

DRILLS - Mud Motor:

Drilex (Aberdeen), Ltd.

DRILLS - Turbo:

Alsthom - Atlantique, Neyrfor
Drilex (Aberdeen), Ltd.
Vereinigte Edelstahlwerke

DRIVES - Chain:

Amsted-Siemag Kette
Olympic Ironworks, Ltd.
Renold, Ltd.
Renold Power Transmission, Ltd.
Sedis

DRIVES - Compound:

Industrialexport
Massarenti
Olympic Ironworks, Ltd.
Petbow, Ltd.
Alfred Wirth & Co. KG
Wirth Maschinen-Und Bahgerate-Fabrick

DRIVES - Compressor:

GEC Gas Turbines Limited
Jeumont-Schneider
Thomassen

DRIVES - Gear:

CIT Alcatel (Gears)
Engrenages Et Reducteurs/Citroen-Messian
Rademakers
Renold, Ltd.
Salzgitter Maschinen

DRIVES - Hydraulic:

A. S. Bergens Mekaniske Verk
Brissonneau & Lotz Marine
Dowty Offshore, Ltd.
Hydraudyne B.V.

DRIVES - Mud Pump:

Industrialexport
Jeumont-Schneider
Massarenti
Vereinigte Edelstahlwerke AG

DRIVES - Pump:

GEC Gas Turbines Limited
Industrialexport
Jeumont-Schneider
Thomassen

DRIVES - Rotary Rig:

Industrialexport

DRIVES - Rotary Tables:

Industrialexport
Salzgitter Maschinen
Vereinigte Edelstahlwerke AG
Alfred Wirth & Co. AG
Wirth Maschinen-Und Bohrgerate-Fabrik

DRYERS - Air:

Atlas Copco AB

DUMPS - Cement:

Tesel Services, Ltd.

DYNAMOMETERS:

Friedrich Leutert GmbH & Co.

ELECTRODES:

G K N Group
Klippon Electricals, Ltd.
Sandvik AB
Unitor Ships Service

ELEVATORS - Casing:

Arbarthorpe Oilfield Services, Ltd.
Griffith Oil Tool, Ltd.
Industrialexport
Offshore Drilling Supplies Limited
Tsukamoto Seiki Co.
Vereinigte Edelstahlwerke

ELEVATORS - Drawworks:

Dreco, Ltd.
Massarenti

ELEVATORS - Drill Collar:

Blohn & Voss AG
Industrialexport
Offshore Drilling Supplies Limited
Tsukamoto Seiki Co.
Vereinigte Edelstahlwerke

ELEVATORS - Drill Pipe:

Silvio Ballerini & C
Blohn & Voss AG
Industrialexport
Offshore Drilling Supplies Limited
Tsukamoto Seiki Co.
Vereinigte Edelstahlwerke

ELEVATORS - Multiple Tubings:

Solum Oil Tool

ELEVATORS - Pipe:

Blohm & Voss AG
Industrialexport
Tsukamoto Seiki Co.

ELEVATORS - Rig:

Brissonneau & Lotz Marine

ELEVATORS - Rig, Personnel & Equipment:

Ceria
Non Corrosive Metal Products, Ltd.

ELEVATORS - Sucker Rod:

Ceria B
Industrialexport

ELEVATORS - Tubing:

Blohm & Voss AG
Griffith Oil Tool, Ltd.
Industrialexport
Offshore Drilling Supplies, Ltd.
Sea Oil Services, Ltd.
Vereinigte Edelstahlwerke

EMULSIFIERS:

CECA I
Chemische Fabriek Servo BV

ENCLOSURES - Instrument:

Klippon Electricals, Ltd.

ENDS - Fluid:

Mento A/S
Offshore Drilling Supplies, Ltd.
Oil Industry Services AS

ENGINEERING:

CIT Alcatel (Gears)
Comex Seal
Elektro Union Offshore A/S
GEC Machanical Handling
Novelles Applications Technologiques
Seamore Oil & Gas Processing
Sofresid

ENGINEERING - Offshore:

Dowty Offshore, Ltd.
Elektro Union Offshore A/S
Ethyd
G K N Group
Redpath Dorman Long
Sofresid
Wharton Engineers

ENGINEERING - Systems Control:

Dowty Offshore, Ltd.
Elektro Union Offshore A/S
GEC-Elliott Process Automation Limited
Matra Offshore
Sofresid

ENGINEERING - Water Service:

G K N Group

ENGINES - Air Cooled:

Klockner-Humboldt-Deutz

ENGINES - Diesel or Oil:

Alsthom Atlantique/Moteurs
A. S. Bergens Mekaniske Verk
Bofors/Nohab
Industrialexport
Irgens Larsen A/S
Klockner-Humboldt-Deutz
Nippon Kokan K.K.
Paxman Diesels
Rognon S.A.
Ruston Diesels
S A C M
Bertel O. Steen A/S

ENGINES - Gas:

Ceria B
Ruston Gas Turbines
S A C M
Thomassen

ENGINES - Marine:

Alsthom-Atlantique Diesel
Bofors/Nohab
Paxman Diesels
Ruston Diesels
S A C M
Bertel O. Steen A/S

ENGINES - Pumping:

Ceria B
Paxman Diesels
Ruston Diesels
Ruston Gas Turbines
S A C M
Bertel O. Steen A/S

ENGINES - Truck:

Klockner-Humboldt-Deutz AG

ENGINES - Turbo-Charged:

Alsthom-Atlantique Diesel
CIT Alcatel (Gears)
Industrialexport
Paxman Diesels
Ruston Diesels
S A C M
Bertel O. Steen A/S
Thomassen

EQUIPMENT - Battery Charging:

Northern Rig Lites
Thomson - CSF AVS

EQUIPMENT - Bulk Material Handling:

CECA I
Ethyd
Olympic Ironworks, Ltd.
Rotator Norway
Wharton Engineers

EQUIPMENT - Combination, Lease Heating:

C. Goldhan
Industrialexportimport
Porta-Test Systems, Ltd.

EQUIPMENT - Communication:

Elektro Union Offshore A/S
GEC Electrical Projects Limited
GEC-Elliott Process Automation, Ltd.

EQUIPMENT - Communications, Subsea:

Comex Industries
Dowty Offshore, Ltd.
Industrialexportimport
Thomson CSF (D A S M)

EQUIPMENT - Core Testing:

Christensen Diamond Product Co.
Diamant Boart S. A.
Geomecanique
R O P
Samega

EQUIPMENT - Cutting & Welding:

Brisco Engineering, Ltd.
J. Caslake, Ltd.
G K N Group
Sandvik AB
Unitor Ships Service AS

EQUIPMENT - Diving:

CIT Alcatel
Ceria
Comex Industries
Comex Seal
Lockheed Petroleum Services, Ltd.
Unitor Ship Services

EQUIPMENT - Electrical:

Bharat Heavy Electricals, Ltd.
Dowty Offshore, Ltd.
Elektro Union Offshore A/S
GEC Electrical Projects Limited
GEC Machines
Jeumont-Schneider
Klippon Electricals, Ltd.
Norsea A/S
Northern Rig Lites
Oil Industry Services AS
Rognon S.A.
Societa Cavi Pirelli
T. I. Group

EQUIPMENT - Fire Fighting:

Irgens Larsen A/S
Non Corrosive Metal Products, Ltd.
Sigmund Pulsometer Pumps, Ltd.
Bertel O. Steen A/S
Thune-Eureka A/S
Unitor Ships Service AS

EQUIPMENT - Hose Fitting Installation:

Arbarthorpe Oilfield Services, Ltd.
Gummi A/S K. Lund & Co.
Industrialexportimport
Offshore Drilling Supplies, Ltd.

EQUIPMENT - Laboratory:

Anchor Drilling Fluids A/S
Basset-Bretagne-Loire
CECA SA
Flopetrol
Geomecanique
R O P
Samega

EQUIPMENT - Mud Testing:

Anchor Drilling Fluids A/S
Kingston Instrument Co., Ltd.

EQUIPMENT -Noise Control:

GEC-Elliott Control Valves, Ltd.
Norseman Shelters, Ltd.

EQUIPMENT - Painting:

Atlas Copco AB
Unitor Ship Services AS

EQUIPMENT - Pipe Inspection:

Breda Fucine

EQUIPMENT - Pollution Control:

Arbarthorpe Oilfield Services, Ltd.
G K N Group
Nippon Kokan K.K.
Novelles Applications Technologiques
Porta-Test Systems, Ltd.
Serck Baker
Sofrance
Thomson - CSF AVS
Unitor Ships Service AS

EQUIPMENT - Production, Packaged:

Brisco Engineering, Ltd.
C. Goldhan
Goldhan Olfeddausrustungen
Intermare Sarda
Robert Jenkins Oil & Gas, Ltd.
Lockheed Petroleum Services, Ltd.
Porta-Test Systems, Ltd.
Seamore Oil & Gas Processing
Siirtec

EQUIPMENT - Safety:

Barber Industries, Ltd.
Brisco Engineering, Ltd.
CIT Alcatel
Hawkins & Tipson Ropemakers
Mento A/S
Oil Industry Services AS
Rognon SA
Unitor Ships Service AS

EQUIPMENT - Steam Flooding:

G K N Group
Offshore Drilling Supplies, Ltd.
Porta-Test Systems, Ltd.
Serck Baker
Venezuela Oil Tool

EQUIPMENT - Water Flooding:
G K N Group
Porta-Test Systems, Ltd.
S.K.A.
Serck Baker
Venezuela Oil Tool

EQUIPMENT - Water Treating:

G K N Group
Nippon Kokan K.K.
Pall Trinity Micro Corp.
Phoceenne De Metallurgie
Serck Baker

EQUIPMENT - Well Logging:

Samega
Tesel Services, Ltd.

ESCALATORS - Rig, Personnel & Equipment:

Non Corrosive Products, Ltd.

EVALUATION - Formation:

Basset-Bretagne-Loire

EVAPORATORS - Heat Recovery:

Novelles Applications Technologiques

EXCHANGERS - Heat:

G K N Group
C. Goldhan
Motherwell Bridge Group
Nippon Kokan K.K.
Novelles Applications Technologiques

EXPORTS - Assembly & Rig-Up:

Non Corrosive Products Ltd.

FABRICATION:

Adamson & Hatchett
Arbarthorpe Oilfield Services, Ltd.
Ateliers et Chanteirs de Bretagne
Barber Industries, Ltd.
Bharat Heavy Electricals, Ltd.
Creusot-Loire/Pressure Vessels Div.
Massarenti
Motherwell Bridge Group
Norseman Shelters, Ltd.
North Sea Exploration Services

FABRICATION - (contd.)

Oil Industry Services AS
Redpath Dorman Long
Sea Oil Services, Ltd.

FACINGS - Clutch:

T. I. Group

FAIRLEADS:

A. S. Bergens Mekaniske Verk
Ceria
Clarke Chapman, Ltd.

FENDERS - Dock:

BTR Silvertown, Ltd.
Hendrik Veder

FILTERS - Air:

G K N Group
Mento A/S
Plenty Group, Ltd.

FILTERS - Chemical:

Plenty Group, Ltd.

FILTERS - Fuel:

New-Mar Oil Services, Ltd.
Plenty Group, Ltd.
Saut-Du-Tarn
Sofrance

FILTERS - Hydrocyclone:

Sigma Chemie, Ltd.

FILTERS - Oil:

G K N Group
Hydraudyne B.V.
Phoceenne De Metallurgie
Plenty Group, Ltd.
Saut-Du-Tarn
Sofrance

FILTERS - Pipeline:

Plenty Group, Ltd.
Porta-Test Systems, Ltd.

FILTERS - Sand:

G K N Group
Plenty Group, Ltd.
Sigma Chemie, Ltd.

FILTERS - Water:

New-Mar Oil Services, Ltd.
Plenty Group, Ltd.
Saut-Du-Tarn

FISHING - Services:

Offshore Drilling Supplies, Ltd.
Tesel Services, Ltd.

FITTINGS - Access, High Pressure:

Gummi A/S K. Jund & Co.
Hydraudyne B.V.
Industrialexport
Vallourec Export

FITTINGS - Cable:

Bruce International

FITTINGS - Cast Steel:

Phoceenne De Metallurgie
Trouvay & Cauvin

FITTINGS - Chain:

Sedis

FITTINGS - Electrical:

Dowty Offshore, Ltd.
Elektro Union Offshore A/S
Goes International Petroleum Services Pte., Ltd.
Northern Rig Lites
Societa Cavi Pirelli
T. I. Group

FITTINGS - Electrical Coated:

Northern Rig Lites

FITTINGS - Fiberglass Epoxy:

Trouvay & Cauvin

FITTINGS - Forged Steel:

Lanzagorta/FIP
Phoceenne De Metallurgie
Silvio Ballerini & C
T. I. Group
Trouvay & Cauvin

FITTINGS - High Pressure:

G K N Group
Hi-Flex International, Ltd.
Hydraudyne B.V.
Industrialexport
Lanzagorta/FIP
Offshore Drilling Supplies, Ltd.
Phoceenne De Metallurgie
Trouvay & Cauvin
Vallourec Export

FITTINGS - Hose:

Arbarthorpe Oilfield Services, Ltd.
Griflex Products, Ltd.
Gummi A/S K. Lund & Co.
Hi-Flex International, Ltd.
Industrialexport
Phoceenne De Metallurgie
T. I. Group

FITTINGS - Mud Line:

Industrialexport

FITTINGS - Orifice:

Phoceenne De Metallurgie

FITTINGS - Pipe:

John Brereton & Company, Ltd.
G K N Group
Goes International Petroleum Services Pte., Ltd.
Hoesch Roehrenwerke
Industrialexport
Nippon Kokan K.K.
Offshore Drilling Supplies, Ltd.
Phoceenne De Metallurgie
Sandvik AB
Sumitomo Metal Industries, Ltd.
T. I. Group
Trouvay & Cauvin
Vallourec Export

FITTINGS - Tube:

John Brereton & Company, Ltd.
Brisco Engineering, Ltd.
Nippon Kokan K.K.
Phoceenne De Metallurgie
Sandvik AB
Trouvay & Cauvin

FITTINGS - Welding:

G K N Group
Phoceenne De Metallurgie
Sandvik AB
T. I. Group
Trouvay & Cauvin
Vallourec Export

FITTINGS - Wire Rope:

Ansell, Jones & Co., Ltd.
G K N Group
Hawkins & Tipson Ropemakers
Sea Oil Services, Ltd.
United Ropeworks
Hendrik Veder

FLANGES - Annulus:

John Brereton & Company, Ltd.
T. I. Group
Trouvay & Cauvin

FLANGES - Blind:

John Brereton & Company, Ltd.
Canada
Lanzagorta/FIP
Phoceenne De Metallurgie
Sandvik AB
T. I. Group

FLANGES - Companion:

John Bererton & Company, Ltd.
Canada
Lanzagorta/FIP
Phoceenne De Metallurgie
Sandvik AB
T. I. Group
Trouvay & Cauvin

FLANGES - Drilling:

Industrialexportimport

FLANGES - Dual String:

John Brereton & Company, Ltd.
Lanzagorta/FIP

FLANGES - Orifice:

John Brereton & Company, Ltd.
Phoceenne De Metallurgie
T. I. Group
Trouvay & Cauvin

FLANGES - Repair:

Phoceenne De Metallurgie

FLANGES - Welding:

John Brereton & Company, Ltd.
Canada
Canada Works
Goes International Petroleum Services
  Pte., Ltd.
Lanzagorta/FIP
Phoceenne De Metallurgie
Sandvik AB
Trouvay & Cauvin

FLARES - Gas:

Barber Industries, Ltd.
G K N Group
Oil Industry Services AS

FLOATS - Drill Pipe:

Equipetrol S.A.
Offshore Drilling Supplies, Ltd.

FLOATS - Life:

Unitor Ships Service AS

FLUIDS - Casing Pack:

CECA I
CECA S.A.
Servecio Hydrocarb

FLUIDS - Completion:

CECA I
Hoechst AG
Servecio Hydrocarb

FLUIDS - Hydraulic Control:

Bronzavia
Dowty Offshore, Ltd.
Hydraudyne B.V.
Ultraglide Limited

FLUIDS - Packer:

Anchor Drilling Fluids A/S
CECA I
Servecio Hydrocarb

FLUIDS - Workover:

Anchor Drilling Fluids A/S
CECA S.A.

FOOTWEAR - Safety Shoes & Boots

Arbarthorpe Oilfield Services, Ltd.
Hevea Raalte B.V.
Unitor Ships Service SA

FORGINGS

Breda Fucine
Creusot-Loire Energie Developments

FORGINGS - Valve:

Breda Fucine
Brisco Engineering, Ltd.
Lanzagorta?FIP
Phoceenne De Metallurgie

FORMS - Sulphur:

Barber Industries, Ltd.

GAGES:

Coventry Gauge, Ltd.
Creusot-Loire
Dai-Ichi Sokuhan Works, Ltd.
Dalmine S.p.A.
Horstmann Gauge & Metrology, Ltd.
Kuroda Precision Industries, Ltd.
Mannesmannroehren-Werke A.G.
OSG Manufacturing Company
Tru-Thread, Ltd.
Tokyo Sokuhan Co., Ltd.

GAGES - Bottom Hole Pressure:

Flopetrol
Friedrich Leutert GmbH & Co.
Lanzagorta/FMCA

GAGES - Casing:

Kuroda Precision Industries, Ltd.
SMFI/Creusot-Loire
T. I. Group

GAGES - Dead Weight:

Friedrich Leutert GmbH & Co.

GAGES - Density:

Samega

GAGES - Depth:

Samega

GAGES - Differential Pressure:

Friedrich Leutert GmbH & Co.
Lanzagorta/FMCA

GAGES - Flow:

Lanzagorta/FMCA

GAGES - Liquid Level:

C. Goldhan
Samega

GAGES - Mud Pump:

Lanzagorta International, Inc.
Offshore Drilling Supplies, Ltd.
Samega

GAGES - Pressure:

Brisco Engineering, Ltd.
Flopetrol
Friedrich Leutert GmbH & Co.
Lanzagorta/FMCA
Samega

GAGES - R.P.M.:

Rognon S.A.
Samega

GAGES - Thread Inspection:

Kuroda Precision Industries, Ltd.
T. I. Group

GAGES - Tubing, Internal:

Kuroda Precision Industries, Ltd.
T. I. Group

GASKETS - Asbestos:

T. I. Group

GASKETS - Blowout Preventer:

Offshore Drilling Supplies Limited

GASKETS - Fiber:

Phoceenne De Metallurgie
T. I. Group

GASKETS - Metallic:

T. I. Group

GASKETS - Moulded:

Dowty Offshore, Ltd.
Stabylica

GASKETS - Ring:

Canada Works
Dowty Offshore, Ltd.
Lanzagorta/FIP
Phoceenne De Metallurgie
Sigma Chemie, Ltd.
T. I. Group

GASKETS - Rubber:

Breda Fucine
Dowty Offshore, Ltd.
Hallite, Ltd.
Sigma Chemie, Ltd.
Stabylia
T. I. Group

GASKETS - Steel:

Lanzagorta/FIP

GEAR UNITS - Variable Speed:

Rademakers
Renold, Ltd.
Voith Getriebe

GEARS:

CIT Alcatel (Gears)
Jensen Brothers Mfg. Co., Inc.
Rademakers
Renold, Ltd.
Salzgitter

GEARS (contd.)

Sumitomo Metal Industries, Ltd.
Voith Getriebe

GEARS - Marine:

Engrenages Et Reducteurs/Citroen-Messian
Rademakers

GEARS - Speed Increasing:

CIT Alcatel (Gears)
Engrenages Et Reducteurs/Citroen-Messian
Rademakers

GEARS - Worm:

CIT Alcatel (Gears)
Engrenages Et Reducteurs/Citroen-Messian
Renold, Ltd.

GENERATORS - Electric:

A. S. Bergens Mekaniske Verk
Bharat Heavy Electricals, Ltd.
GEC Machines
Holec
Industrialexport
Jeumont-Schneider
Klockner-Humboldt-Deutz
Northern Rig Lites
Paxman Diesels
Petbow, Ltd.
Rognon S.A.
Bertel O. Steen A/S

GENERATORS - Electric, Solar:

Industrialexport

GENERATORS - Steam:

Bharat Heavy Electricals, Ltd.

GLOVES - Safety:

Unitor Ships Service SA

GOGGLES - Divins:

Unitor Ships Service

GRABS - Rope, Wire Line:

Hendrik Veder

GRAVEL - Sand Control:

Sea Oil Services, Ltd.
Servecio Hydrocarb

GREASE & OILS:

Sigma Chemie, Ltd.
Ultraglide Limited

GRINDERS:

Unitor Ships Service SA

GRIPS - Catline:

Dreco, Ltd.

GROUTING - Packers:

Sigma Chemie, Ltd.

GUARDS - Kelly Bushing:

Arbarthorpe Oilfield Services, Ltd.

GUARDS - Pumping Unit, Crank:

Ceria B
Salzgitter

GUIDES - Completion:

Equipetrol S.A.

GUIDES - Milling:

Industrialexportimport

GUIDES - Overshot:

Industrialexportimport
Offshore Drilling Supplies, Ltd.

GUIDES - Sucker Rod:

Industrialexportimport
Vereinigte Edelstahlwerke AG

GUIDES - Wireline:

Ceria
Hendrik Veder
Offshore Drilling Supplies, Ltd.
Stabylia

GUNS - Mud:

Industrialexport
Kingston Instrument Co., Ltd.

GYROS - Directional:

Ferranti, Ltd.
Friedrich Leutert GmbH

HANGERS - Casing:

Breda Fucine
Canada
Industrialexportimport
Lanzagorta/FIP
Venezuela Oil Tool

HANGERS - Tubing:

Breda Fucine
Canada
Industrialexport
Lanzagorta/FIP
T. I. Group
Venezuela Oil Tool

HANGERS - Tubing, Multiple String:

Breda Fucine
Canada
Lanzagorta/FIP
Venezuela Oil Tool

HANGERS - Wireline Guide:

Hendrik Veder

HARDBANDING - Service:

Lion Oil Tool

HARDFACING:

Breda Fucine
Drillcon Industries, Ltd.
Equipetrol S.A.
G K N Group
Lion Oil Tool
SMFI/Marep
T. F. DeMexico S.A.
Vereinigte Edelstahlwerke AG

HEADS - Casing:

Breda Fucine
Canada
Goes International Petroleum Service
  Pte., Ltd.
Industrialexport

HEADS - Casing (contd.)

Kurt Kohorn, Ltd.
Lanzagorta/FIP
Lanzagorta/Inval
Mapegaz
Offshore Drilling Supplies, Ltd.
SMFI/Creusot-Loire
Sereg Schlumberger/Malbranque

HEADS - Casing, Subsea:

Kurt Kohorn, Ltd.

HEADS - Cementing:

Industrialexport
Mapegaz

HEADS - Circulating:

Industrialexportimport

HEADS - Control:

Industrialexport
Lanzagorta/Inval
Mapegaz

HEADS - Cylinder:

A/S Raufoss
Van Der Horst Asia Pte., Ltd.

HEADS - Drilling:

Canada

HEADS - Landing:

Canada
Kurt Kohorn, Ltd.

HEADS - Rotating:

Kurt Kohorn, Ltd.

HEADS - Stripper:

Kurt Kohorn, Ltd.

HEADS - Subsea:

Equipetrol S.A.
Kurt Kohorn, Ltd.

HEADS - Tubing:

Breda Fucine
Canada
Industrialexportimport
Kurt Kohorn, Ltd.
Lanzagorta/FIP
Mapegaz
SMFI/Creusot-Loire
Sereg Schlumberger/Malbranque

HEADS - Tubing, Multiple String:

Breda Fucine
Canada
Kurt Kohorn, Ltd.
Lanzagorta/FIP

HEADS - Tubing, Stripper:

Breda Fucine
Kurt Kohorn, Ltd.

HEADS - Tubingless Completion:

Kurt Kohorn, Ltd.

HEADS - Unitized, Casing & Tubing:

Breda Fucine
Kurt Kohorn, Ltd.
Mapegaz
Sereg Schlumberger/Malbranque

HEADS - Workover:

Kurt Kohorn, Ltd.

HEATERS - Derrick:

Northern Rig Lites

HEATERS - Direct & Indirect:

C. Goldhan
Robert Jenkins Oil & Gas
Porta-Test Systems, Ltd.
Siirtec

HEATERS - Oil:

Canadian Brown Steel Tank Co.
C. Goldhan-Lubeck Olfeldausrostungen
Offshore Drilling Suppliers, Ltd.

HEATERS - Steam Generating:

C. Goldhan
Offshore Drilling Supplies Limited

HEATERS - Tank:

C. Goldhan

HEATERS - Water:

Phoceenne De Metallurgie

HELICOPTER REFUELING EQUIPMENT:

New-Mar Oil Services, Ltd.

HOIST - Air:

Atlas Copco AB
Ceria
Industrialexportimport
Unitor Ships Service

HOIST - Drill Pipe:

A/S Moelven Brug
Offshore Drilling Supplies, Ltd.

HOISTS - Hydraulic:

A. S. Bergens Mekaniske Verk
Ceria
Hydraudyne B.V.
Hydraulik Brattvaag

HOISTS - Measuring Line:

Ceria

HOISTS - Portable:

Unitor Ships Service

HOLD-DOWNS - Liner Hanger:

Sea Oil Services, Ltd.

HOLD-DOWNS - Rod Pump:
Bolland & Cia
S.B.S.
Vereinigte Edelstahlwerke
HOOKS - Drill Pipe:

A/S Raufoss
Industrialexport

HOOKS - Rod & Tubing:

Industrialexportimport

HOOKUPS - Production, Subsea:

Comex Seal

HOOKUPS - Well Completion:

Comex Seal

HOPPERS - Mud or Cement:

Bharat Heavy Electricals, Ltd.
Industrialexport
Itag
Offshore Drilling Supplies, Ltd.

HOSE - Air, Steam, Water, Oil, Gas, Fire, Etc.:

Arbarthorpe Oilfield Services, Ltd.
Atlas Copco AB
Griflex Products, Ltd.
Gummi A/S K. Lund & Co.
Offshore Drilling Supplies, Ltd.
Paguag GmbH
T. I. Group
Treg, Div. of Pirelli
Unitor Ships Service AS

HOSE - Blowout Preventer:

Coflexip
Gummi A/S K. Lund & Co.

HOSE - Cementing:

Coflexip
Gummi A/S K. Lund & Co.

HOSE - Dredging:

Gummi A/S K. Lund & Co.
Treg, Div. of Pirelli

HOSE - High Pressure:

Coflexip
Gummi A/S K. Lund & Co.
New-Mar Oil Services, Ltd.
Paguag GmbH
T. I. Group

HOSE - L P G:

Coflexip
Gummi A/S K. Lund & Co.
T. I. Group
Treg, Div. of Pirelli

HOSE - Plastic:

Coflexip
Griflex Products, Ltd.
Gummi A/S K. Lund & Co.
T. I. Group

HOSE - Rotary:

Coflexip
Goes International Petroleum Services Pte., Ltd.
Greengate Industrial Polymers, Ltd.
Gummi A/S K. Lund & Co.
Industrias Pirelli, S.A.I. y C.
Offshore Drilling Supplies, Limited
Taurus Hungarian Rubber Works
Togawa Rubber Mfg. Co., Ltd.
Unitor Ships Service A/S

HOSE - Steam Expansion:

Gummi A/S K. Lund & Co.

HOSE - Suction & Discharge:

Gummi A/S K. Lund & Co.
Mento A/S
New-Mar Oil Services, Ltd.
Offshore Drilling Supplies Limited
T. I. Group
Treg, Div. of Pirelli

HOSE - Welding:

Gummi A/S K. Lund & Co.
Treg, Div. of Pirelli

HOUSES - Bunk, Dining, Locker, Etc.:

Irgens Larsen A.S.
T. I. Group
Tavernier-Houdy

HOUSES - Canvas:

Norseman Shelters, Ltd.
Tavernier-Houdy

HOUSES - Engine:

Norseman Shelters, Ltd.
Olympic Ironworks, Ltd.
Tavernier-Houdy

HOUSES - Instrument:

Tavernier-Houdy

HOUSES - Meter:

New-Mar Oil Services, Ltd.
Tavernier-Houdy

HOUSES - Mud:

CECA I
Olympic Ironworks, Ltd.
Tavernier-Houdy

HOUSES - Power:

ACEP (France)
Olympic Ironworks, Ltd.
Tavernier-Houdy

HOUSES - Prefabricated:

Olympic Ironworks, Ltd.
T. I. Group
Tavernier-Houdy

HOUSES - Tool:

Olympic Ironworks, Ltd.
Tavernier-Houdy

HOUSING - Rig:

Norseman Shelters, Ltd.
Offshore Drilling Supplies, Ltd.
Olympic Ironworks, Ltd.

HOUSING - Storage:

Norseman Shelters, Ltd.
Offshore Drilling Supplies, Ltd.
Olympic Ironworks, Ltd.
Tavernier-Houdy

HOUSING - Wellhead, Subsea:

Olympic Ironworks, Ltd.
A/S Raufoss

HYPERBARIC - Centers:

Comex Industries
Creusot-Loire Engergie Developments

IMPELLERS:

Arbarthrope Oilfield Services, Ltd.
Offshore Drilling Supplies, Ltd.

INCINERATORS:

Irgens Larsen A/S
Motherwell Bridge Group

INCLINOMETERS:

Thomson CSF (D A S M)

INDICATORS - Anchor Windlass:

Ceria

INDICATORS - Crane Load:

Ceria

INDICATORS - Depth:

Ceria
Offshore Drilling Supplies, Ltd.
Tesel Services, Ltd.

INDICATORS - Directional Drilling:

Friedrich Leutert GmbH

INDICATORS - Drift:

Friedrich Leutert GmbH

INDICATORS - Drilling Control:

Offshore Drilling Supplies, Ltd.
Samega

INDICATORS - Flow:

Automotive Products, Ltd.
Samega

INDICATORS - Free Point:

Tesel Services, Ltd.

INDICATORS - Hole Fill-Up:

Dreco, Ltd.

INDICATORS - Liquid Level:

Samega
Tesel Services, Ltd.

INDICATORS - Mud Circulation Rate:

Samega

INDICATORS - Mud Pit Level:

Samega

INDICATORS - Mud Pressure:

Brisco Engineering, Ltd.
Offshore Drilling Supplies, Ltd.

INDICATORS - Mud Weight:

Samega
Unitor Ships Service AS

INDICATORS - Position:

Thomson - CSF (D A S M)

INDICATORS - Torque:

Samega

INDICATORS - Vessel Position:

GEC Group (England)

INDICATORS - Weight, Bottom Hole:

Samega

INDICATORS - Weight, Recording:

Samega

INDICATORS - Weight, Wire Line:

Ceria
Flopetrol
Industrialexportimport
Offshore Drilling Supplies, Ltd.

INHIBITORS - Corrosion:

CECA I
CECA II
Chemische Fabriek Servo
Drilltec GmbH
Goes International Petroleum Service Pte., Ltd.

INHIBITORS - Corrosion (contd.)

Hoechst AG
Offshore Drilling Supplies, Ltd.
Unitor Ships Service

INJECTORS - Chemical:

Brisco Engineering, Ltd.
Costruzioni Hydro-Pneumatic
Goes International Petroleum Service Pte., Ltd.
Goldhan Olfeddausrustungen GmbH
Offshore Drilling Supplies, Ltd.

INJECTORS - Chemical, Bottom Hole:

Brisco Engineering, Ltd.

INJECTORS - Subsea Grease:

Brisco Engineering, Ltd.

INSERTS - Choke:

Canada

INSERTS - Slip & Spider:

Arbarthorpe Oilfield Services Ltd.
Offshore Drilling Supplies, Ltd.

INSERTS - Valve:

Sea Oil Services, Ltd.
Stabylia

INSPECTION - Casing:

T. I. Group
O. I. S.

INSPECTION - Drill Collars:

Breda Fucine
Sea Oil Services, Ltd.
O. I. S.

INSPECTION - Drill Pipe:

Breda Fucine
Sea Oil Services, Ltd.
T. I. Group
O. I. S.

INSPECTION - Magnetic Particle:

Breda Fucine
O. I. S.

INSPECTION - Pipe:

Breda Fucine
O. I. S.
T. I. Group

INSPECTION - Pipeline:

O. I. S.
T. I. Group

INSPECTION - Sucker Rod:

O. I. S.
T. I. Group

INSPECTION - Thread:

Inspection Tubular Goods - British Steel Corp.
Kuroda Precision Industries, Ltd.
O. I. S.
Sea Oil Services, Ltd.
T. I. Group

INSPECTION - Ultrasonic:

Breda Fucine
O. I. S.

INSPECTION - Weld:

Ateliers et Chanteirs de Bretagne
O. I. S.

INSTRUMENTATION - Marine Drilling:

C G A/Alcatel
Mento A/S
Unitor Ships Service AS

INSTRUMENTATION - Platform:

Brisco Engineering, Ltd.

INSTRUMENTATION - Subsea:

Brisco Engineering, Ltd.

INSTRUMENTS - Directional Drilling Control:

Friedrich Leutert GmbH & Co.

INSTRUMENTS - Gas Meter:

New-Mar Oil Services, Ltd.
Phoceenne De Metallurgie

INSTRUMENTS - Oceanographic:

Thomson CSF (D A S M)

INSTRUMENTS - Pressure:

Brisco Engineering, Ltd.
Friedrich Leutert GmbH & Co.
Samega

INSTRUMENTS - Subsurface Pressure Gages:

Friedrich Leutert GmbH & Co.

INSTRUMENTS - Well Surveying:

Samega
Tesel Services, Ltd.
Western Hydraulic

INSULATION - Duct:

Elkem-Spirgerverket A/S

INSULATION - Fire:

Elkem-Spigerverket A/S

INSULATION - Pipe:

Elkem-Spigerverket A/S
Phoceenne De Metallurgie

JACKS - Casing:

Hydraudyne B.V.

JACKS - Gripper:

Hydraudyne, B.V.

JACKS - Hydraulic:

Ceria
Doncaster Moorside, Ltd.
Goes International Petroleum Service Pte., Ltd.
Hydraudyne B.V.

JACKS - Offshore Drilling Barge:

Hydraudyne B.V.

JACKS - Offshore Platform:

Hydraudyne B.V.

JACKS - Rig:

Brissonneau & Lotz Marine
Griffith Oil Tool, Ltd.
Hydraudyne B.V.
Olympic Ironworks, Ltd.

JACKS - Rig Skidding:

Hydraudyne B.V.
Olympic Ironworks, Ltd.

JARS - Bumper:

Goes International Petroleum Service
  Pte., Ltd.
Griffith Oil Tool, Ltd.
Industrialexportimport
Offshore Drilling Supplies, Ltd.
Sea Oil Services, Ltd.

JARS - Circulating:

Industrialexportimport
Offshore Drilling Supplies, Ltd.

JARS - Drilling, Mechanical:

Griffith Oil Tool, Ltd.
Industrialexportimport
Offshore Drilling Supplies, Ltd.
Sea Oil Services, Ltd.

JARS - Hydraulic:

Griffith Oil Tool, Ltd.
Offshore Drilling Supplies, Ltd.
Van Der Horst

JARS - Knuckle:

Industrialexportimport

JARS - Rotary:

Griffith Oil Tool, Ltd.
Industrialexportimport
Offshore Drilling Supplies, Ltd.

JARS - Safety Joint:

Industrialexportimport
Offshore Drilling Supplies, Ltd.

JARS - Wire Line:

Griffith Oil Tool, Ltd.
Industrialexportimport
Offshore Drilling Supplies, Ltd.

JOINTS - Ball:

Van Der Horst

JOINTS - Expansion:

BTR Silvertown, Ltd.
Phoceenne De Metallurgie
T. I. Group

JOINTS - Flex Offshore:

Comex Seal

JOINTS - Knuckle, Wire Line:

Flopetrol
Seaco

JOINTS - Pipe:

British Steel Corp.
Creusot-Loire/Pressure Vessels Div.
Nippon Kokan K.K.
Phoceenne De Metallurgie
SMFI/Creusot-Loire
Serck Audco Valves
Vallourec Export

JOINTS - Pup:

Drillcon Industries, Ltd.
Equipetrol S.A.
Hamblin & Glover Oilfield Services, Ltd.
Hunting Group
Lion Oil Tool
Offshore Drilling Supplies, Ltd.
SMFI/Creusot-Loire
SMFI/Marep

JOINTS - Riser, Subsea:

Comex Seal
Matra Offshore

JOINTS - Slip, Offshore:

Van Der Horst Asia Pte., Ltd.

JOINTS - Safety Drilling:

Arai Ironworks

JOINTS - Safety Tubing:

Arai Ironworks

JOINTS - Swivel:

(ACEP)
Creusot-Loire Energie Developments
Itag Celle
Offshore Drilling Supplies, Ltd.
Phoceenne De Metallurgie
Unitor Ships Service AS
Verinigte Edelstahlwerke AG

JOINTS - Tool:

Aker Norsco Contracting
Arai Iron Works Co., Ltd.
A/S Raufoss
Breda Fucine S.p.A.
Creusot-Loire - Div. Material De Forage
Csepel Works
Daido Steel Co., Ltd.
Dai-Ichi Sokuhan Works, Ltd.
Demco, Ltd.
Diamant Boart S.A.
Drillcon Industries, Ltd.
Equipetrol S.A.
Euro-Drill Equipment (UK), Ltd.
Fukuda Kogyo Co., Ltd.
G K N Group
Hermann Von RautenKranz, Internat-
  Tiefbohr GmbH & Co., KG ITAG
Horstmann Gauge & Metrology, Ltd.
Hunting Oilfield Services, Ltd.
Industrialexport
Intreprinderea De Tevi Roman
Intreprinderea De Utilaj Petrolier
Intreprinderea Mecanica Fina
Koruda Precision Industries, Ltd.
Lion Oil Tool Group
Mannesmann Handel AG
Mannesmannroehren-Werke AG
Mitsubishi Steel Mfg. Co., Ltd.
Morse/Hemco Corp.
Nippon Kokan K.K.
Nippon Kokan Tsugite Kabushiki Kaisha
Offshore Drilling Supplies, Ltd.
Petromeca
Rauma Repola Oy, Lokoma Div.
SMFI/Creusot-Loire
S.P.A. James Massarenti

JOINTS - Tool (contd.)

Deaco
Sea Oil Services, Ltd.
Stewart Ross & Co., Inc.
Sumitomo Metal Industries, Ltd.
Tahara Manufacturing Co., Ltd.
T. F. DeMexico, S.A.
T. I. Coventry Gauge, Ltd.
T. I. Group
Tokiwa Industrial Co., Ltd.
Tokyo Sokuhan Co., Ltd.
Tone Boring Co., Ltd.
Tru-Thread, Ltd.
TRW Mission Industria Ltd.
Tsukamoto Seiki Co., Ltd.
Union Industrielle et D'Entreprise
U.M.D. International
Vereinigte Edelstahlwerke A.G.
Wirth Maschinen-und Bohrgerate Fabrik
Yoshida Boring Machine Mfg. Co., Ltd.

JOINTS - Tool, Flush Joint:

Arai Ironworks
SMFI/Creusot-Loire

JOINTS - Tool, Threadless:

Arai Ironworks
Tsukamoto Seiki Co.

JOINTS - Tool, Tubing:

Arai Ironworks
British Steel Corp.
Drillcon Industries, Ltd.
Equipetrol S.A.
SMFI/Creusot-Loire
Van Der Horst Asia Pte., Ltd.
Vereinigte Edelstahlwerke AG

JOINTS - Universal:

Voith Getriebe

KELLYS:

Breda Fucine
Equipetrol S.A.
Lanzagorta/CM
Offshore Drilling Supplies Limited
SMFI/Marep
Vereinigte Edelstahlwerke

KELLYS - Hex Drive:

Drillcon Industries, Ltd.
Industrialexportimport

KELLYS - Square Drive:

Breda Fucine
Drillcon Industries, Ltd.
Equipetrol S.A.
Industrialexportimport
SMFI/Marep

KNIVES - Wire Line:

Flopetrol
Industrialexportimport
Seaco

KNOCK-OUTS - Free Water:

C. Goldhan
Robert Jenkins Oil & Gas
Novelles Applications Technologiques

LABOR - Contracting:

Brisco Engineering, Ltd.
Oil Industry Services A.S.

LADDERS - Telescopic:

Verhoef Aluminum Scheepsbouwindustrie

LANTERNS - Electric, Vaporproof:

T. I. Group

LANTERNS - Marine:

T. I. Group

LATCHES - Hydraulic, Subsea:

Hydraudyne B.V.

LATHES:

Ateliers Demoor S.A.

LIGHTING SYSTEMS - Navigational:

Northern Rig Lites

LIGHTS - Explosion Proof:

Atlas Copco AB

LIGHTS - Explosion Proof (contd.)
Atlas Copco AB
Northern Rig Lites
Rognon S.A.
T. I. Group
Unitor Ships Service A/S

LIGHTS - Flood:

Northern Rig Lites
T. I. Group

LIGHTS - Hand:

Northern Rig Lites
T. I. Group
Unitor Ships Service A/S

LIGHTS - Navigation:

New-Mar Oil Services, Ltd.
Northern Rig Lites

LIGHTS - Offshore:

Northern Rig Lites
T. I. Group

LIGHTS - Rig & Derrick:

Bharat Heavy Electricals, Ltd.
Northern Rig Lites
Offshore Drilling Supplies, Ltd.
T. I. Group

LIGHTS - Underwater:

Unitor Ships Service A/S

LINERS - Cemented:

Industrialexportimport

LINERS - De-Sander:

Industrialexportimport
Sigma Chemie, Ltd.

LINERS - Desilter:

Industrialexportimport
Sigma Chemie, Ltd.

LINERS - Pump:

Arbarthorpe Oilfield Services, Ltd.
BTR Silvertown, Ltd.

LINERS - Pump (contd.)
Bolland & Cia
G K N Group
Goes International Petroleum Services Pte., Ltd.
Industrialexportimport
Massarenti
Mento A/S
Offshore Drilling Supplies Limited
S.B.S.
Vereinigte Edelstahlwerke
LINERS - Tubing:

Industrialexportimport
Sandvik AB
Vallourec Export

LINES - Choke & Kill:

Gummi A/S K. Lune & Co.
Offshore Drilling Supplies, Ltd.

LINES - Gathering, Offshore:

Paguag GmbH & Co.

LINES - Hydraulic Control:

Gummi A/S K. Lund & Co.
Unitor Ships Service AS

LINES - Tail:

Sandvik AB

LINES - Tow & Anchor:

Elkem-Spirgerverket A/S
Hawkins & Tipson Repemakers
Hendrik Veder
United Ropeworks

LINING - Brake:

Offshore Drilling Supplies Limited

LINKS - Chain:

Elkem A/S
Hamanaka Chain Mfg. Co., Ltd.
Hendrik Veder

LINKS - Elevator:

Blohm & Voss AG
Creusot-Loire Energie Developments
Griffith Oil Tool, Ltd.

LINKS - Elevator (contd.)

Industrialexportimport
Offshore Drilling Supplies, Ltd.
Vereinigte Edelstahlwerke AG

LINKS - Pennant:

Elkem-Spigerverket A/S

LOCATORS - Tubing End:

Flopetrol

LOGGING - Caliper:

Hunting Group
Tesel Services, Ltd.

LOGGING - Cement Bond:

Hunting Group
Tesel Services, Ltd.

LOGGING - Collar:

Tesel Services, Ltd.

LOGGING - Density:

Hunting Group
Samega
Tesel Services, Ltd.

LOGGING - Drift:

Friedrich Leutert GmbH & Co.

LOGGING - Drilling Rate:

Samega

LOGGING - Electrical:

GEC Group
Tesel Services, Ltd.

LOGGING - Fluid Levels:

Samega
Tesel Services, Ltd.

LOGGING - Focused Current:

Tesel Services, Ltd.

LOGGING - Mineral:

Tesel Services, Ltd.

LOGGING - Mud Analysis:

Samega

LOGGING - Offshore Service Unit:

Flopetrol
Tesel Services, Ltd.

LOGGING - Pressure:

Friedrich Leutert GmbH
Samega

LOGGING - Radio Activity:

Hunting Group
Tesel Services, Ltd.

LOGGING - Stuck Pipe:

Tesel Services, Ltd.

LOGGING - Temperature:

Friedrich Leutert GmbH
Junting Group
Samega
Tesel Services, Ltd.

LOGGING - Velocity:

Tesel Services, Ltd.

LOST CIRCULATION - Materials:

Anchor Drilling Fluids, A/S
CECA I
CECA S.A.
Brinadd Co.

LUBRICANTS:

CECA I
CECA S.A.
Mento A/S
Offshore Drilling Supplies, Ltd.
Ultraglide Limited
Unitor Ships Service AS

LUBRICANTS - Packing:

AVA International, Inc.
Ultraglide Limited

LUBRICANTS - Thread:

Offshore Drilling Supplies, Ltd.
Ultraglide Limited

LUBRICANTS - Valve:

Kurt Kohorn, Ltd.
Serck Audco Valves
Ultraglide Limited

LUBRICANTS - Wireline:

Ultraglide, Ltd.

LUBRICATORS - Valve:

Brisco Engineering, Ltd.
Kurt Kohorn, Ltd.

MACHINE SHOP SERVICES:
Ateliers Demoor S.A.
Creusot-Loire Energie Developments
Massarenti
North Sea Exploration Services
Rotator Norway
Sea Oil Services, Ltd.
T. I. Group
Unitor Ships Service AS
Van Der Horst Asia Pte., Ltd.
Venezuela Oil Tool
Vivalo
MACHINES - Pipe Pulling:

Salzgitter Maschinen

MACHINES - Pipe Threading & Cutting:

Ateliers Demoor S.A.

MACHINES - Welding:

Brisco Engineering, Ltd.
G K N Group
Unitor Ships Service

MACHINING - Equipment:

Ateliers Demoor S.A.
Creusot-Loire Energie Developments
T. I. Group
Unitor Ships Service AS

MACHINING - Steel:

Creusot-Loire Energie Developments
James Fairley Steels

MAGNETS - Fishing:

Industrialexportimport
Kingston Instrument Co., Ltd.
Offshore Drilling Supplies, Ltd.

MAINTENANCE - On & Offshore:

Comex Seal
Elektro Union Offshore A/S
GEC-Elliott Process Automation, Ltd.
G K N Group
North Sea Exploration Services
Sofresid

MANAGEMENT - Project:

Comex Seal
Elektro Union Offshore A/S
G K N Group
Novelles Applications Technologiques
Seamore Oil & Gas Processing

MANDRELS - Drift:

J. Caslake, Ltd.
Offshore Drilling Supplies Limited
Sea Oil Services, Ltd.
Sigma Chemie, Ltd.

MANDRELS - Locking:

Brastech Industrial
Carlo, S.A.
Flopetrol
Impanex, S.A.
Malbranque
Seaco

MANDRELS - Sidepocket:

Teledyne Merla

MANDRELS - Tubing, Gas Lift:

Teledyne Merla

MANDRELS - Tubing Suspension:

Breda Fucine
Canada Works

MANIFOLDS - Blow-Out Preventer:

Industrialexportimport
Olympic Ironworks, Ltd.
Van Der Horst

MANIFOLDS - Cementing:

Industrialexportimport

MANIFOLDS - Flow Control:

Brisco Engineering, Ltd.
Creusot-Loire Energie Developments
Lanzagorta/FIP
Phoceenne De Metallurgie

MANIFOLDS - Hydraulic Pumping:

Hydraudyne B.V.

MANIFOLDS - Mud Line:

Kurt Kohorn, Ltd.
Olympic Ironworks, Ltd.

MASTS - Cantilever:

Bharat Heavy Electricals, Ltd.
Dreco, Ltd.
Industria Del Hierro, S.A. De C.V.
Industrialexportimport
Lanzagorta International, Inc.
Massarenti
Olympic Ironworks, Ltd.
Joseph Paris S.A.
Silvio Ballerini & C
U.I.E.

MASTS - Folding:

Industrialexportimport
Lanzagorta/FIP
Joseph Paris, S.A.

MASTS - Jacknife:

Dreco, Ltd.
Massarenti
Olympic Ironworks, Ltd.
Joseph Paris S.A.

MASTS - Portable:

ArmstrongWhitworth (Metal Inds), Ltd.
Dreco, Ltd.
Industria Del Hierro, S.A. De C.V.
Industrialexportimport
Lanzagorta/CM
Massarenti
The Oil Well Engineering Co.
Olympic Ironworks, Ltd.

MASTS - Slant Hole Drilling:

Olympic Ironworks, Ltd.
Joseph Paris S.A.

MASTS - Telescoping:

Creusot-Loire Energie Developments
Dreco, Ltd.
Industria Del Hierro, S.A. De C.V.
Industrialexportimport
Lanzagorta International
Massarenti
Olympic Ironworks, Ltd.
Salzgitter Maschinen
Vereinigte Edelstahlwerke AG
U.I.E.

MASTS - Tripod:

Lanzagorta/CM
Joseph Paris S.A.

METALS - Hard Surfacing:

Creusot-Loire Energie Developments
Lion Oil Tool

METERS - Combination Separator & Meter:

Basset-Bretagne-Loire
C. Goldhan
Robert Jenkins Oil & Gas

METERS - Current:

Thomson - CSF (D A S M)

METERS - Density:

Samega

METERS - Flow:

Flopetrol
Phoceenne De Metallurgie
Samega

METERS - Gas:

Teledyne Merla

METERS - Oil:

New-Mar Oil Services, Ltd.

METERS - Pit Lever:

Samega

METERS - Positive Volume:

C. Goldhan
New-Mar Oil Services, Ltd.

METERS - Resistivity:

Samega

METERS - Turbine:

Kurt Kohorn, Ltd.
New-Mar Oil Services, Ltd.

METERS - Velocity:

Ferranti, Ltd.

METERS - Water:

Kurt Kohorn, Ltd.
New-Mar Oil Services, Ltd.

MICROSCOPES - Chart Reading:

Friedrich Leutert GmbH & Co.

MICROWAVE - Systems:

Ferrenti, Ltd.

MILLS - Casing:

Industrialexportimport
Lor, Inc.
Offshore Drilling Supplies, Ltd.
SMFI/Creusot-Loire
Sea Oil Services, Ltd.

MILLS - Drill Collar & Drill Pipe:

Industrialexportimport
Lor, Inc.
Sea Oil Services, Ltd.

MILLS - Inside Fluted:

Sea Oil Services, Ltd.

MILLS - Junk:

Canamco Services & Supplies
Lion Oil Tool

MILLS - Junk (contd.)
Lor, Inc.
Offshore Drilling Supplies, Ltd.
SMFI/Creusot-Loire
Sea Oil Services, Ltd.

MILLS - Liner:
Lor, Inc.
Sea Oil Services, Ltd.

MILLS - Packer & Cement:
Industrialexportimport
Lor, Inc.
Sea Oil Services, Ltd.
Venezuela Oil Tool
MILLS - Pilot:
Industrialexportimport
Lion Oil Tool
Lor, Inc.

MILLS - Reamer:
Lor, Inc.
SMFI/Creusot-Loire
Sea Oil Services, Ltd.

MILLS - Round Nose:
Lor, Inc.
Offshore Drilling Supplies, Ltd.
Sea Oil Services, Ltd.

MILLS - Section:

Lor, Inc.

MILLS - Starting:

Lor, Inc.

MILLS - Taper:
Industrialexportimport
Lion Oil Tool
Lor, Inc.
Offshore Drilling Supplies, Ltd.
Sea Oil Services, Ltd.

MILLS - Tubing:
SMFI/Creusot-Loire
Sea Oil Services, Ltd.

MILLS - Tubing & Window:

Industrialexportimport
Lor, Inc.

MIXERS - Fluid:

Industrialexportimport
Plenty Group, Ltd.

MIXERS - Mud:

Dreco, Ltd.
Goes International Petroleum Services Pte., Ltd.
Industrialexportimport
Itag
Offshore Drilling Supplies, Ltd
Silvio Ballerini & C
Unitor Ships Service AS

MODULES - Atmospheric Transfer:

Comex Industries

MODULES - Immersion Control:

Ateliers et Chanteirs de Bretagne

MONITORS:

C G A/Alcatel

MONITORS - B S & W:

C G A/Alcatel
Unitor Ships Service AS

MONITORS - Mud Circulation:

C G A/Alcatel

MOORING SYSTEMS:

A. S. Bergens Mekaniske Verk
Brissonneau & Lotz Marine
Bruce International
Ceria
Creusot-Loire Energie Developments
Elektro Union Offshore A/S
Elkem
Equipements Mecaniques et Hydrauliques
GEC Mechanical Handling
Hawkins & Tipson Ropemakers
Hendrik Veder
Hydraulik Brattvaag
Irgens Larsen A.S.
Kleber
Norsea A/S
Pusnes Mekaniske Versted
United Ropemakers
Vickers, Ltd.
Wharton Engineers

MOTORS - Electric:

Ateliers de Constructions Electriques de Charleroi

MOTORS - Electric (contd.)

Bharat Heavy Electricals, Ltd.
Brissonneau & Lotz Marine
GEC Machines
Goes International Petroleum Services
  Pte., Ltd.
Holec
Industrialexportimport
Jeumont-Schneider
Northern Rig Lites
Offshore Drilling Supplies, Ltd.

MOTORS - Hydraulic:

A. S. Bergens Mekaniske Verk
Brissonneau & Lotz Marine
Dowty Offshore, Ltd.
GEC Group
Hydraudyne B.V.
Industrialexportimport
Western Hydraulic

MOTORS - Waterproof:

Ateliers de Constructions Electriques
  de Charleroi
Brissonneau & Lotz Marine
Clarke Chapman, Ltd.
Holec
Rognon S.A.

MOUNTINGS - Vibration Control:

BTR Silvertown, Ltd.

MUD - Drilling:

Anchor Drilling Fluids A/S
B W Mud, Ltd.
CECA I
Hercules France S. A.
Hoechst AG
Norsk Hydro
Rhone-Poulenc Industries

MUD - Oil Base:

Anchor Drilling Fluids A/S
CECA I

MUD - Oil Emulsion:

Anchor Drilling Fluids A/S
CECAI

MULTIPLEXERS - Bob Control:

Matra Offshore

NETS - Cargo:

Elkem

NETS - Personnel Rescue:

Hendrik Veder

NETS - Personnel Transfer:

Hendrik Veder
United Ropeworks

NIPPLES - Blast:

Hunting Group

NIPPLES - Cage:

Lanzagorta/FIP

NIPPLES - Casing:

Dalmine S.P.A.
Industrialexportimport
Lanzagorta International, Inc.

NIPPLES - Hydraulic Choke:

Hydraudyne B.V.

NIPPLES - Landing:

Breda Fucine
Flopetrol

NIPPLES - No Go:

AVA International, Inc.

NIPPLES - Pipe:

Lanzagorta/FIP
T. I. Group

NIPPLES - Plain Choke:

Kingston Instrument Co., Ltd.
Lanzagorta International, Inc.

NIPPLES - Ported:

AVA International, Inc.

NIPPLES - Sub-Surface Pump:

Vereinigte Edelstahlwerke AG

NIPPLES - Swage:

Lanzagorta/FIP

NIPPLES - Tubing:

Dalmine
Industrialexportimport
T. I. Group

NOZZLES - Flow:

Phoceenne De Metallurgie

NOZZLES - Jet, Rock Bit:

Tsukamoto Seiki Company

NOZZLES - Mud Gun:

Dreco, Ltd.
Offshore Drilling Supplies, Ltd.

NUTS:

Doncasters Moorside, Ltd.
G K N Group
Phoceenne De Metallurgie

NUTS - Propellor Fitting:

Doncasters Moorside, Ltd.

OCEANOGRAPHIC - Data Gathering & Recording:

Ceria
Dowty Offshore, Ltd.
Thomson CSF AVS

OIL - Hydraulic:

Hydraudyne B.V.
Ultraglide Limited

OPENERS - Hole:

Drilling & Service
Goes International Petroleum Services Pte., Ltd.
Norsea A/S
SMFI/Creusot-Loire
Sea Oil Services, Ltd.

OPENERS - Hole (contd.)

J. K. Smit & Sons
Tsukamoto Seiki Co.

ORIENTATION - Bottom Hole:

Friedrich Leutert GmbH & Co.
Tesel Services, Ltd.

O-RINGS:

Lanzagorta International, Inc.

OVERSHOTS - Continuous Strings:

Offshore Drilling Supplies, Ltd.

OVERSHOTS - Releasing & Circulating:

Industrialexportimport
Offshore Drilling Supplies Limited
Sea Oil Services, Ltd.

OVERSHOTS - Rope Sockets:

Industrialexportimport

OVERSHOTS - Short Catch:

Industrialexportimport

OVERSHOTS - Sucker Rod:

Industrialexportimport
Offshore Drilling Supplies, Ltd.

OVERSHOTS - Tubing:

Goes International Petroleum Services Pte., Ltd.
Industrialexportimport

OVERSHOTS - Wire Line Fishing:

Diamant Boart S.A.
Flopetrol
Industrialexportimport

PACKERS - Anchor:

Industrialexportimport

PACKERS - By Pass:

AVA International, Inc.

PACKERS - Casing:

McAllister & Associates

PACKERS - Casing External:

Kleber

PACKERS - Casing Pump:

Offshore Drilling Supplies, Ltd.

PACKERS - Cup:

Industrialexportimport

PACKERS - Drillable:

Industrialexportimport
Okgt

PACKERS - Formation:

Okgt

PACKERS - Gravel:

Offshore Drilling Supplies, Ltd.

PACKERS - Hook Wall:

Okgt

PACKERS - Hydraulic Set:

AVA International, Inc.
Okgt

PACKERS - Inflatable:

Pronal
Kleber

PACKERS - Kelly, Rotating:

Offshore Drilling Supplies, Ltd.

PACKERS - Liner:

Industrialexportimport
Okgt
Venezuela Oil Tool
PACKERS - Permanent:

Carlo, S.A.
Flopetrol
Site Oil Tools, Ltd.

PACKERS - Production:

AVA International, Inc.

PACKERS - Pumpdown:

Industrialexportimport

PACKERS - Retrievable:
AVA International, Inc.
Industrialexportimport
SKA
Site Oil Tools

PACKERS - Slimhole:

Industrialexportimport

PACKERS - Squeeze:

Okgt

PACKERS - Thermal Recovery:

Industrialexportimport

PACKERS - Wireline:

Ava International, Inc.
Industrialexportimport
Tesel Services, Ltd.

PACKING - Pump:

Offshore Drilling Supplies, Ltd.

PACKING - Rubber:

Hallite, Ltd.
Regal Industrial Rubber CA
Sigma Chemie, Ltd.
Stabylia
PACKING - Stuffing Box:

Industrialexportimport
Okgt

PACKING - Swivel Wash Pipe:

W/Stabylia

PACKOFFS - Casing & Tubing:

AVA International, Inc.

PAINT:

Sigma Chemie, Ltd.

PANELS - Control:

Automotive Products, Ltd.
AVA International, Inc.
Brisco Engineering, Ltd.
Costruzioni Hydro-Pneumatic
Motherwell Bridge
Northern Rig Lites
P. D. Rasspe Sohne
Rotator Norway
Sigmund Pulsometer Pumps
Unitor Ships Service AS

PATCHES - Casing:

Offshore Drilling Supplies, Ltd.

PERFORATING:

Tesel Services, Ltd.

PERFORATING - Offshore Service Unit & Oriented:

Tesel Services, Ltd.

PERFORATORS - Jet, Pipe & Tubing:

Tesel Services, Ltd.

PERFORATORS - Tubing:

T. I. Group

PERMEAMETERS:

Ruska Instrument Corp.
Samega

PERSONNEL - Offshore:

Brisco Engineering, Ltd.
Comex Seal
North Sea Exploration Services
Porta-Test Systems, Ltd.
Tesel Services, Ltd.

PIGS - Inspection:

Barber Industries, Ltd.
Proval

PIGS - Scraper:

Barber Industries, Ltd.
Phoceenne De Metallurgie

PILE DRIVING - Underwater:

Motherwell Bridge

PILOTS - Auto:

Brisco Engineering, Ltd.

PILOTS - Hydraulic:

Baker CAC
Brisco Engineering, Ltd.
Hydraudyne B.V.

PILOTS - Pneumatic:

Baker CAC
Brisco Engineering, Ltd.

PILOTS - Safety Valve:

AVA International, Inc.
Baker CAC
Brisco Engineering, Ltd.
Kurt Kohorn, Ltd.

PIPE BENDING:

Creusot-Loire/Pressure Vessels Div.
Nippon Kokan K.K.

PIPE - Coated:

The Algoma Steel Corp.
Drillcon Industries, Ltd.
Mannesmann Handel AG
Mannesmannrohren-Werke
Motherwell Bridge Company
Nippon Kokan K.K.
Trouvay & Cauvin
Vallourec Export

PIPE - Drill:

Arbarthorpe Oilfield Services, Ltd.
Breda Fucine
British Steel Corp.
Dalmine
Drillcon Industries, Ltd.
Equipetrol S.A.
G K N Group
Goes International Petroleum Services Pte., Ltd.
Industrialexportimport
Mannesmann Handel AG
Mannesmannrohren-Werke
Nippon Kokan K.K.
Offshore Drilling Supplies, Ltd.

PIPE - Drill (contd.)

Sumitomo Metal Industries
Trouvay & Cauvin
Trouvay Handel AG
United Casing Steel & Pipe, Ltd.
Vallourec Export

PIPE - Drill, Aluminum:

United Casing Steel & Pipe, Ltd.

PIPE - Drill, Flush Joint:

Industrialexportimport
Mannesmann Handel AG
Mannesmann Roehren-Werke AG
Sumitomo Metal Industries, Ltd.
United Casing Steel & Pipe, Ltd.
Vallourec Export

PIPE - Drill, Geophysical:

United Casing Steel & Pipe, Ltd.

PIPE - Drill, Heavy Wall:

Drillcon Industries, Ltd.
Equipetrol, S.A.
G K N Group
Mannesmann Handel AG
Mannesmann Roehren-Werke AG
Nippon Kokan K.K.
SMFI/Marep
Sumitomo Metal Industries, Ltd.
United Casing Steel & Pipe, Ltd.

PIPE - Drill, Integral Joint:

Breda Fucine
Industrialexportimport
Mannesmannrohre-Werke
United Casing Steel & Pipe Ltd.
Vallourec Export

PIPE - Drill, Integral Flush:

Breda Fucine
Drillcon Industries Ltd.
Mannesmann Handel AG
Mannesmannrohren-Werke
United Casing Steel & Pipe Ltd.
Vallourec Export

PIPE - Drill, Seamless:

Breda Fucine
British Steel Corporation
Mannesmann Handel AG
Mannesmannrohren-Werke
Nippon Kokan
Sumitomo Metal Industries
United Casing Steel & Pipe Ltd.
Vallourec Export

PIPE - Drill, Tubing:

Drillcon Industries Ltd.
Nippon Kokan K. K.
Norsea A/S
Offshore Drilling Supplies Ltd.
Sumitomo Metal Industries
Trouvay & Cauvin
United Casing Steel & Pipe Ltd.
Vallourec Export

PIPE - External Upset:

Dalmine S.P.A.
Drillcon Industries Ltd.
Mannesmannrohren-Werke
Nippon Kokan
Nippon Steel Corporation
Sumitomo Metal Industries
United Casing Steel & Pipe Ltd.
Vallourec Export

PIPE - Fabricated Structural Steel:

Bergrohr GMBH Herne
Bergrohr GMBH Siegen
Confab Industrial S.A.
Dragados & Construcciones, S.A.
Fuji Tekko Kabushiki Kaisha
Kawasaki Steel Corporation
Kokubo Tekkosho
Kolsch-Folzer-Werke AG
Mannesmannroehren-Werke AG
Nippon Kokan Kabushiki Kaisha
Nippon Steel Corporation
Nishimura Koki Company, Ltd.
Osaka Tetsuen Kikai Company, Ltd.
Sakai Iron Works Company, Ltd.
Sumitomo Metal Industries, Ltd.
Toa Gaigyo Company, Ltd.
Vallourec Export

PIPE - Fiberglass Epoxy:

Ciba-Geigy Pipe Systems
Ketech
Nippon Kokan K.K.
Phoceenne De Metallurgie
Sepma

PIPE - Flexible:

Conflexip
Paguag GmbH & Company
Paguag GmbH
T. I. Group

PIPE - Internal Upset:

Mannesmannrohren-Werke
Nippon Kokan K. K.
United Casing Steel & Pipe Ltd.
Vallourec Export

PIPE - Line:

The Algoma Steel Corporation
British Steel Corporation
Drillcon Industries Ltd.
Hoesch Roehrenwerke
Mannesmann Handel AG
Mannesmannrohren-Werke
Nippon Kokan
Nippon Steel Corporation
Paguag GmbH & Company
Paguag GmbH
Sandvik AB
Sumitomo Metal Industries Ltd.
T. I. Group
Trouvay & Cauvin
United Casing Steel & Pipe Ltd.
Vallourec Export

PIPE - Plastic:

Phillips Driscopipe, Inc.
Phillips Extruded Products, Inc.

PIPE - Plastic Coated:

Breda Fucine
Drillcon Industries Ltd.
Hoesch Roehrenwerke
Mannesmann Handel AG
Mannesmannrohren-Werke
Nippon Kokan K. K.
Phoceenne De Metallurgie
Sumitomo Metal Industries Ltd.
United Casing Steel & Pipe Ltd.
Vallourec Export

PIPE - Pre-Fabricated:

Creusot-Loire/Pressure Vessels Div.
Nippon Kokan K. K.

PIPE - Slotted or Perforated:
B & B
Dalmine
Sandvik AB
Sea Oil Services Ltd.
Servecio Hydrocarb

PIPE - Wash:

Equipetrol S. A.

PIPE - Welded:

British Steel Corporation
Hoesch Roehrenwerke
Kawasaki Steel Corporation
Mannesmann Handel AG
Mannesmannrohren-Werke AG
Nippon Kokan
Nippon Steel Corporation
Phoceenne De Metallurgie
Sandvik Ab
Sumitomo Metal Industries Ltd.
T. I. Group
Trouvay & Cauvan
Motherwell Bridge
Vallourec Export

PIPE LAYERS - Sub-Sea:

Ateliers et Chanteirs de Bretagne
Coflexip

PIPE LAYERS - Sub-Sea (Cont.):

Nippon Kokan K. K.
Wharton Engineers

PIPE-LINE - High Pressure:

Ciba-Geigy

PIPELINES - Flexible, Offshore:

Paguag GmbH & Company

PIPE & COUPLINGS

Acciaierie e Ferriere Lombarde FALCK
Acciaierie Tubificio Arvedi
ACINDAR, Industria Argentina de Aceros S.A.
Alessio Tubi S.p.A.
The Algoma Steel Corporation, Ltd.
Athens Pipe Works S.A.
British Steel Corporation, Tubes Div.
C. A. Conduven
Confab Industrial S.A.
Corinth Pipeworks
Csepel Works
C.V.G. Siderurgica del Orinoco C.A.
Dalmine Siderca S.A.I.C.
Dalmine S.p.A.
Eisenwerk-Gesellschaft Macimilianshutte mbH
Eschweiler Bergwerks-Verein AG
Estel Rohr AG
The Far East Machinery Company, Ltd.
F.I.T. Ferrotubi Corbetta S.p.A.
Fort Worth Pipe & Supply Company
HYLSA, S.A.
Hyundai Pipe Company, Ltd.
Ilssin Steel Company, Ltd.
The Indian Tube Company, Ltd.
Interprovincial Steel & Pipe Corp. ltd.
Interprinderea De Tevi Republica
Interprinderea De Tevi Roman
Kawasaki Steel Corporation
Korea Steel Pipe Company, Ltd.
Kosovska Metaina Industrija
Laminaciones de Lesaca, S.A.
Mannesmann S/A
Mannesmannrohren-Werke AG
Mario Maraldi S.p.A.
Maruichi Steel Tube Ltd.
Middle East Tube Company
Nippon Kokan Kabushiki Kaisha
Nippon Steel Corporation
Nova Hut Klementa Gottwalda, Narodni Podnik

PIPE & COUPLINGS (Cont.):

Paderwerk Gebr. Benteler
Persico Pizzamiglio A.A.
Phoenix Steel Tube Company, Ltd.
Productos Tubulares Monclova, S.A.
Prudential Steel Ltd.
Pusan Steel Pipe Industrial Company, Ltd.
Rohrenwerke Bous/Saar GmbH
S.E.T.A., S.p.A., Societa Europea
    Tubifici e Acciaierie S.p.A.
Siam Di Tella Ltda. (Siat Div.)
SKF Steel
Stelco Inc.
Sumitomo Metal Industries, Ltd.
Transformaciones Metalurgicas Especiales, S.A.
Tubacero, S.A.
Tubacex, C.E. de Tubos por Extrusion, S.A.
Tubemakers of Australia Ltd., Steel Pipe Div.
Tubificio Dalmine Italsider S.p.A.
Tubos de Acero de Mexico, S.A.
Tubos Reunidos, S.A.
Uddeholms Atkiebolag, Tube Div.
Union Steel Mfg. Company, Ltd.
Usines a Tubes de la Meuse
Valexy
Vallourec
VALTI
Vitkovice Steel and Engineering Works of
    Klement Gottwald, Nat. Corp.
VOEST-ALPINE AG
Zeljezara Sisak

PIPE THREADERS

Ateliers Demoor S.A
DEMCO, Ltd.
Hamblin Oilfield (Services), Ltd.
Kuroda Precision Industries, Ltd.
Nippon Kokan Tsugite Kabushiki Kaisha
Oilfield Mfg. Pte., Ltd.
Oilfield Tubular Services (S) Pte., Ltd.
Tamotsu Kogyo Kabushiki Kaisha
T.P.S. Industries, Ltd.
Tri-State Oil Tool (S) Pte., Ltd.
Tube Investments, Ltd.

PIPE WORK - Fabricating:

North Sea Exploration Services

PISTONS - Pump:

Bronzavia
Goes International Petroleum Services Pte., Ltd.
Industrialexportimport

PISTONS - Pump (Cont.):

Offshore Drilling Supplies Ltd.
Stabylia

PLANTS - Air:

Bharat Heavy Electricals Ltd.

PLANTS - Crude Oil Treating:

Robert Jenkins Oil & Gas
Seamore Oil & Gas Processing

PLANTS - Desulfurization:

Robert Jenkins Oil & Gas

PLANTS - Electric:

ACEP
A. S. Bergens Mekaniske Verk
Bharat Heavy Electricals Ltd.
Elektro Union Offshore A/S
GEC Gas Turbines Ltd.
Holec Petbow Ltd.
Petbow Ltd.
Bertel O. Steen A/S
T. I. Group

PLANTS - Hydrocarbon Recovery:

GKN Group
Robert Jenkins Oil & Gas
Novelles Applications Technologique
Serck Baker
Siirtec

PLANTS - Water Treatment:

GKN Group
Novelles Applications Technologiques
Motherwell Bridge Group
Offshore Drilling Supplies Ltd.
Serck Baker

PLANTS - Waste Treatment:

Motherwell Bridge
Serck Baker
Canamco Services & Supplies

PLATES - Baffle:

Friedrich Leutert GmbH & Co.

PLATES - Steel:

Nippon Kokan Kabushiki Kaisha

PLATFORMS - Derrick:

Creusot-Loire Energie Developments
Dreco Ltd.
Lanzagorta International Inc.
Joseph Paris SA
Salzgitter Maschinen
U.I.E.

PLATFORMS - Offshore:

Creusot-Loire/Pressure Vessles Div.
Equipements Mecaniques et Hydrauliques
Industrialexportimport
Intermare Sarda
Lanzagorta International
Motherwell Bridge Group
Nippon Kokan K. K.
Redpath Dorman Long Ltd.
U.I.E.

PLATFORMS - Production, Automated:

Ceria B
Redpath Dorman Long Ltd.
GEC Group

PLATFORMS - Racking, Mast:

Dreco, Ltd.
Industria Del Hierro S.A. De C.V.
Olympic Ironworks Ltd.
Joseph Paris S. A.
Salzgitter Maschinen

PLATFORMS - Stabbing:

Dreco, Ltd.
Industria Del Hierro S.A. De C.V.
Joseph Paris Ltd.

PLUGS - Bull:

Breda Fucine
Lanzagorta/FIP
Offshore Drilling Supplies Ltd.
T. I. Group

PLUGS - Casing, Drill Pipe & Tubing:

Hamblin & Glover Oilfield Services Ltd.
Industrialexport
Kuroda Precision Industries Ltd.
Sigma Chemie Ltd.

PLUGS - Cementing:

Industrialexport
Sigma Chemie Ltd.

PLUGS - Cementing, Rubber:

B T R Silvertown Ltd.
Industrialexportimport
Kleber
Stabylia

PLUGS - Choke:

Kurt Kohorn Ltd.

PLUGS - Circulating:

Industrialexportimport

PLUGS - Expandable:

B T R Silvertown Ltd.

PLUGS - Gauge:

T. I. Group

PLUGS - Inflatable:

Kleber
Pronal

PLUGS - Packer:

AVA International Inc.
Industrialexport

PLUGS - Pneumatic:

Industrialexportimport

PLUGS - Sealing:

Kleber

PLUGS - Valve Removal:

Canada
Lanzagorta/FIP

PLUNGERS - Oil & Gas Well:

Teledyne Merla

PLUNGERS - Pump:

Hydraudyne B. V.
Industrialexportimport
Offshore Drilling Supplies Ltd.

PODS - Sub-Sea Control:

Dowty Offshore Ltd.
Matra Offshore

POROMETERS -

Ruska Instrument Co.
Samega

POWER UNITS - Diesel Skid:

Bofors/Nohab
Flopetrol
Industrialexport
Bertel O. Steen A/S
Offshore Drilling Supplies Ltd.

PRESSURE BOMBS -

Leotret

PRESSERS - Hydraulic:

Hydraudyne B. V.

PREVENTERS - Blowout:

B T R Silvertown Ltd.
Baker C A C
Goes Intl. Petroleum Services Pte. Ltd.
Griffith Oil Tool Ltd.
INdustrialexport
Norsea A/S
Offshore Drilling Supplies Ltd.
Rognon S. A.
Van Der Horst

PREVENTERS - Blowout, Annular:

Griffith Oil Tool Ltd.
Industrialexportimport
Van Der Horst Asia Pte. Ltd.

PREVENTERS - Blowout, Inside:

Griffith Oil Tool Ltd.
Offshore Drilling Supplies Ltd.

PREVENTERS - Blowout, Operating Units:

Industrialexportimport
Ohemco

PREVENTERS - Blowout, Ram Type:

Griffith Oil Tool Ltd.
Industrialexportimport
Van Der Horst Asia Pte. Ltd.

PREVENTERS - Blowout, Rotating:

Industrialexportimport

PREVENTERS - Blowout, Sub-Sea:

Industrialexportimport
Van Der Horst Asia Pte. Ltd.

PREVENTERS - Blowout, Wire Line:

Diamant Boart S. A.

PROBES - Sand:

Baker C A C
Flopetrol

PROBES - Temperature:

Jeaumont-Schneider
KSB (Klein, Schazlin & Becker)
Sigmund Pulsometer Pumps Ltd.

PRODUCTION - Single String, Multiple Zones:

AVA International Inc.

PRODUCTION - Sub-Sea Systems:

Ateliers de Constructions Electriques
de Sharleroi
British Steel Corporation
Comex Seal
Matra Offshore

PROPELLERS - Marine:

Ateliers et Chanteirs de Bretagne
Ceria
Comex Industries

PROTECTORS - Actuator Stem:

Sigma Chemie Ltd.

PROTECTORS - Bowl:

Hubner Gray GmbH
Sigma Chemie Ltd.

PROTECTORS - Casing, Tubing & Drill Pipe:

Arbarthorpe Oilfield Services Ltd.
Drillcon Industries Ltd.
Drilltec GmbH
Farr Oil Tool Inc.
Goes Intl. Petroleum Services Pte. Ltd.
Hamblin & Glover Oilfield Services Ltd.
Mape
Offshore Drilling Supplies Ltd.
Sigma Chemie Ltd.
Stabylia
Vallourec

PROTECTORS - Coupling:

Drilltech GmbH
Hamblin & Glover Oilfield Services Ltd.
Sigma Shemie Ltd.

PROTECTORS - Crown Block:

Sigma Chemie Ltd.

PROTECTORS - Electrical Cable:

Northern Rig Lites
Sigma Chemie Ltd.
T. I. Group

PROTECTORS - Hydraulic Control Lift:

Sigma Chemie Ltd.
Unitor Ships Service AS

PROTECTORS - Kelly Sub:

S M F I/Marep
Sigma Chemie Ltd.

PROTECTORS - Thread:

Breda Fucine
Drillcon Industries Ltd.
Drilltec GmbH
Hamblin & Glover Oilfield Services Ltd.
Lion Oil Tool
Offshore Drilling Supplies Ltd.
S M F I/Marep
Sibma Chemie Ltd.
Stabylia
Vereinigte Edelstahlwerke AG
Lor, Inc.

PROTECTORS - Tool Joint:

Breda Fucine
Drilltec GmbH
Sigma Chemie Ltd.
Vereinigte Edelstahlwerke AG

PULLERS - Casing:

Industrialexportimport

PULLERS - Liner:

Offshore Drilling Supplies Ltd.
SMF International

PULLERS - Pump Piston:

Ceria B
Offshore Drilling Supplies Ltd.

PULLERS - Valve:

SMF International

PULLERS - Valve Seat:

Offshore Drilling Supplies Ltd.
SMF International

PULLEYS - Hay:

Ansell, Jones & Company Ltd.

PUMPING UNITS -

Barber Industries
Cometarsa S.A.I.C.
Dominion Bridge Company Ltd.
Engrenages et Reducteurs
Hamilton Gear & Machine Co., Div. of
    Compro Ltd.
Intreprinderes Vulcan Bucuresti
LeGrand Industries, Inc.
Renn Industries Inc.
Rusco Hnos S. A.
Salzgitter Maschenin Und Anlagen AG
Siam Di Tella Ltda.
Universal Industries Ltd.
Vereinigte Edelstahlwerke AG

PUMPS - Air/Gas Operated:

Atlas Copco AB
Brisco Engineering, Ltd.
Costruzioni Hydro-Pneumatic
C. Goldhan
Hydraudyne B.V.
Unitor Ship[illegible]ice A/S

PUMPS - Blowout Preventer:

Industrialexportimport
Ohemco

PUMPS - Booster:

Ateliers de Constructions Electriques
British Pump Company
Bronzavia
Creusot-Loire Energie Developments
Hydraudyne B. V.
Costruzioni Hydro-Pneumatic
Jeumont-Schneider
Sigmund Pulsometer Pumps
Van Der Horst Asia Pte. Ltd.

PUMPS - Cable Suspended:

Mape

PUMPS - Cement:

Creusot-Loire Energie Developments
Industrialexportimport
OPI, Inc.

PUMPS - Centrifugal:

Arbarthorpe Oilfield Services Ltd.
Ateliers de Constructions Electriques
British Pump Company
Goes Intl. Petroleum Services Pte. Ltd.
Industrialexportimport
Jeumont-Schneider
KSB (Klein, Schanzlin & Becker)
Mento A/S
New-Mar Oil Services Ltd.
Offshore Drilling Supplies Ltd.
Plenty Group Ltd.
Sigmund Pulsometer Pumps Ltd.
Thune-Eureka A/S
Unitor Ships Services A/S

PUMPS - Chemical:

Ateliers de Constructions Electriques
British Pump Company
Costruzioni Hydro-Pneumatic
Creusot-Loire Energie Developments
Jeumont-Schneider
New-Mar Oil Services Ltd.
OPI, Inc.
Offshore Drilling Supplies Ltd.
Sigmund Pulsometer Pumps
Teledyne Merla

PUMPS - Diaphragm:

British Pump Company
New-Mar Oil Services Ltd.
Unitor Ships Services AS

PUMPS - Duplex:

Alfred Wirth & Company KG
Industrialexport
Massarenti
Offshore Drilling Supplies Ltd.
Plenty Group Ltd.
Silvio Ballerini & Company
Van Der Horst Asia Pte. Ltd.
Vereinigte Edelstahlwerke AG
Wirth Maschinen-Und Bohrgerate-Fanrick

PUMPS - Fire Fighting:

ACEP
Jeumont-Schneider
KSB (Klein, Schanzlin & Becker)
Sigmund Pulsometer Pumps
Thune Eureka A/S

PUMPS - Fluid, High Pressure:

Dowty Offshore Ltd.
KSB (Klein, Schanzlin & Becker)
OPI, Inc.
Plenty Group Ltd.
Sigmund Pulsometer Pumps Ltd.
Voith Getriebe

PUMPS - Fluid Powered:

Brisco Engineering Ltd.
Dowty Offshore Ltd.
KSB (Klein, Schanzlin & Becker)
Plenty Group Ltd.
Sigmund Pulsometer Pumps

PUMPS - Glycol:

KSB (Klein, Schanzlin & Becker)
New-Mar Oil Services Ltd.
Plenty Group Ltd.
Offshore Drilling Supplies, Ltd.
Sigmund Pupsometer Pumps

PUMPS - Hand Operated:

Brisco Engineering Ltd.
R O P

PUMPS - Hydraulic:

Ateliers de Constructions Electriques
Bonzavia
Doncasters Moorside Ltd.
Dowty Offshore Ltd.
GEC Group
Hydraudyne B.V.
Jeumont-Schneider
KSB (Klein, Schanzlin & Becker)
Marta Offshore
Plenty Group Ltd.
Sigmund Pulsometer Pumps
Voith Getriebe

PUMPS - Hydraulic, Downhole:

Hydraudyne B. V.
KSB (Klein, Schanzlin & Becker)

PUMPS - Hydrostatic Testing:

Brisco Engineering Ltd.
Costruzioni Hydro-Pneumatic
Hydraudyne B. V.

PUMPS - Jet Deepwell:
KSB (Klein, Schanzlin & Becker)
Plenty Group Ltd.

PUMPS - LPG:

Ateliers de Constructions Electriques
Sigmund Pulsometer Pumps

PUMPS - Mud Mixing:

Dreco, Ltd.
Industrialexportimport
KSB (Klein, Schanzlin & Becker)
Offshore Drilling Supplies Ltd.
Plenty Group Ltd.

PUMPS - Oil Well:

Ateliers de Constructions Electriques
Ceria B
Industrialexport
KSB (Klein, Schanzlin & Becker)
Offshore Drilling Supplies Ltd.
Sigmund Pulsometer Pumps
Sandvik AB
Vereinigte Edelstahlwerke

PUMPS - Pipeline:

Ateliers de Constructions Electriques
KSB (Klein, Schanzlin & Becker)
Plenty Group Ltd.
Sigmund Pulsometer Pumps

PUMPS - Piston Type:

Brisco Engineering Ltd.
Dreco Ltd.
Hydraudyne B. V.
Industrialexport
Massarenti
OPI, Inc.
United Ships Services
Wirth Maschinen-Und Bohrgerate-Fabrick

PUMPS - Plunger:

Brisco Engineering Ltd.
Dreco Ltd.
Export Oil Field Supply
Hydraudyne B. V.
Industrialexport
OPI, Inc.
Vereinigte Edelstahlwerke AG

PUMPS - Production:

KSB (Klein, Schanzlin & Becker)
Sigmund Pulsometer Pumps Ltd.

PUMPS - Production, Centrifugal/Submersible:

Jeaumont-Schneider
KSB (Klein, Schanzlin & Becker)

PUMPS - Production, Jet:

KSB (Klein, Schanzlin & Becker)

PUMPS - Production, Sucker Rod:

KSB (Klein, Schanzlin & Becker)
Vereinigte Edelstahlwerke AG

PUMPS - Proportioning:

R O P

PUMPS - Quintuplex:

Creusot-Loire Energie Developments

PUMPS - Reciprocating:

Brisco Engineering Ltd.
Creusot-Loire Energie Developments
Massarenti
OPI, Inc.
Vereinigte Edelstahlwerke

PUMPS - Rod:

Bompet de Venezuelez

PUMPS & PUMP PARTS -

Bolland & Cia. S.A.
Est. Mecanicos Jone S.A.O. y C.
Inpamex S.A.
Millingford Engineering Company, Ltd.
Petromecanica S.A.I. y C.
Quinn's Oilfield Supply Ltd.
Vereinigte Edelstahlwerke AG

PUMPS - Rotary Gear:

Brisco Engineering Ltd.
Engrenages Et Reducteurs/Citroen-Messian
KSB (Klein, Schanzlin & Becker)
Plenty Group Ltd.

PUMPS - Salt Water:

Industrialexportimport
KSB (Klein, Schanzlin & Becker)
Offshore Drilling Supplies Ltd.
Plenty Group Ltd.
Sigmund Pulsometer Pumps

PUMPS - Sand:

KSB (Klein, Schanzlin & Becker)
Vereinigte Edelstahlwerke

PUMPS - Screw:

KSB (Klein, Schanzlin & Becker)
Motherwell Bridge Group
Plenty Group Ltd.

PUMPS - Self Priming:

Sigmund Pulsometer Pumps Ltd.

PUMPS - Slurry:

Creusot-Loire Energie Developments
Dreco Ltd.
Industrialexport

PUMPS - Slurry (Cont.):

Jeumont-Schneider
Offshore Drilling Supplies Ltd.
Plenty Group Ltd.
Sigmund Pulsometer
Pumps Ltd.
Wirth Maschinen-Und Bohregerate-Fabrick

PUMPS - Slush:

Bharat Heavy Electricals Ltd.
Creusot-Loire Energie Developments
Dreco Ltd.
Industria Del Hierro S.A. De C.V.
Industrialexport
Jeumont-Schneider
KSB (Klein, Schanzlin & Becker)
Lanzagorta/C M
Massarenti
OPI, Inc.
Offshore Drilling Supplies Ltd.
Unitor Ships Service AS
Van Der Horst Asia Pte. Ltd.
Alfred Wirth & Company KG
Wirth Maschinen-Und Bohregerate-Fabrick

PUMPS - Steam:

KSB (Klein, Schanzlin & Becker)

PUMPS - Submersible:

ACEC
Jeumont-Schneider
KSB (Klein, Schanzlin & Becker)
Matra Offshore
Sigmund Pulsometer Pumps
Unitor Ships Service A/S

PUMPS - Sump:

KSB (Klein, Schanzlin & Becker)
Sigmund Pulsometer Pumps
Unitor Ships Services

PUMPS - Triplex:

Creusot-Loire Energie Developments
Dreco, Ltd.
Industrie Del Heirro S.A. De C.V.
Industrialexport
Lanzagorta/C M
Massarenti
OPI, Inc.

PUMPS - Triplex (Cont.):

Offshore Drilling Supplies Ltd.
Ven Der Horst Asia Pte. Ltd.
Vereinigte Edelstahlwerke AG
Wirth Maschinen-Und Bohrgerate-Fabrick
Alfred Wirth & Company KG

PUMPS - Vertical:

Ateliers de Constructions Electriques
Ceria B
Jeaumont Schneider
KSB (Klein, Schanzlin & Becker)
Plenty Group Ltd.
Sigmund Pulsometer Pumps

PUMPS - Water:

Bharat Heavy Electricals Ltd.
Jeumont-Schneider
KSB (Klein, Schanzlin & Becker)
Sigmund Pulsometer Pumps

PUMPS - Water Flooding:

KSB (Klein, Schanzlin & Becker)
Plenty Group Ltd.
Sigmund Pulsometer Pumps
Unitor Ships Service AS

PUMPS - Water Well:

Industrialexportimport
Jeumont-Schneider
KSB (Klein, Schanzlin & Becker)
Sigmund Pulsometer Pumps Ltd.

PUMPS - Well Acidizing, Cementing & Fracturing:

Creusot-Loire Energie Developments
Industrialexportimport
KSB (Klein, Schanzlin & Becker)
OPI, Inc.

PURIFIERS - Water:

Serck Baker

RACKS - Casing, Drill Pipe & Tubing:

Arbarthorpe Oilfield Services Ltd.
Industrialexportimport
Itag
Sigma Chemie Ltd.

RACKS - Hose & Cable:

Industrialexportimport

RACKS - Tubular Marine:

Sigma Chemie Ltd.

RADIO - Communications:

Norsea A/S

RAMS - Blowout Preventer:

Griffith Oil Tool Ltd.
INdustrialexportimport

REACTORS -

Creusot-Loire/Pressure Vessels Div.

REAMERS - Hole Opening:

Diamant Boart S.A.
Industrialexportimport
G K N Group
Offshore Drilling Supplies Ltd.
Lion Oil Tool

REAMERS - Rotary:

Griffith Oil Tool Company
Industrialexportimport
S M F I/Marep

REAMERS - Stabilizers:

GKN Group
Griffith Oil Tool, Ltd.
Lion Oil Tool, Ltd.
S M F I/Marep

RECONDITIONING - Tool Joints, Etc.:

Lion Oil Tool
Sea Oil Services Ltd.
T. I. Group

RECORDERS - Bore Hole Survey:

Friedrich Leutert GmbH & Company
Tesel Services Ltd.

RECORDERS - Circulation Rate:

Samega

RECORDERS - Drift:

Friedrich Leutert GmbH & Company

RECORDERS - Drilling:

Samega
Unitor Ships Service AS

RECORDERS - Drilling Rate:

Offshore Drilling Supplies Ltd.
Samega

RECORDERS - Gas Temperature:

Friedrich Leutert GmbH & Company

RECORDERS - Liquid Level:

Samega

RECORDERS - Logging:

Samega
Tesel SErvices Ltd.

RECORDERS - Mud Flow:

Samega

RECORDERS - Mud Volume:

Samega

RECORDERS - Mud Weight:

Samega

RECORDERS - Pressure:

Brisco Engineering Ltd.
Flopetrol
Friedrich Leutert GmbH & Company

RECORDERS - R.P.M.:

Samega

RECORDERS - Rotary Speed:

Samega

RECORDERS - Rotary Torque:

Samega

RECORDERS - Specific Gravity:

Samega

RECORDERS - Temperature:

Flopetrol
Friedrich Leutert GmbH & Company
Samega
Tesel Services Ltd.

RECORDERS - Tubing & Casing Pressure:

Samega

RECORDERS - Weight:

Samega
Unitor Ships Services AS

RECORDERS - Well Test:

Tesel Services Ltd.

RECTIFIERS - Electrical:

Elektro Union Offshore A/S
Jeumont-Schneider

REDUCERS - Speed, Geared:

CIT Alcatel (Gears)
Engrenages Et Reducteurs/Citroen-Messian
France Operator
Rademakers
Renold Power Transmissions, Ltd.
REELS - Hoses, Sub-Sea:

Ceria
New-Mar Oil Services Ltd.

REELS - Hydraulic Control Lines:

Ceria
New-Mar Oil Services Ltd.
Western Hydraulic

REELS - Measuring Line:

Ceria
Friedrich Leutert GmbH & Company
Western Hydraulic

REELS - Sand Line:

Friedrich Leutert GmbH & Company

REFRIGERATION - Equipment:

Novelles Applications Technologiques
Unitor Ships Services

REGULATORS - Gas:

GEC-Elliott Control Valves Ltd.

REGULATORS - Pressure:

Brisco Engineering Ltd.
Bronzavia
Camlow
Matra Offshore

RELAYS - Pneumatic:

Brisco ENgineering Ltd.

REPAIRS - Drill Collars:

Itag
Lion Oil Tool
Sea Oil Services Ltd.
T. I. Group

REPAIRS - Drill Pipe:

Itag
Sea Oil Services, Ltd.
T. I. Group

REPAIRS - Instrument:

Elektro Unoin Offshore A/S

REPAIRS - Offshore:

Creusot-Loire/Pressure Vessels Div.
Elektro Union Offshore A/S
G K N Group

REPAIRS - Pump:

OIP, Inc.

REPAIRS - Tool Joint:

Itag
Lion Oil Tool
Sea Oil Services Ltd.
T. I. Group

REPAIRS - Valve:

G K N Group
Kurt Kohorn Ltd.
Sea Oil Services Ltd.
Van Der Horst

RETAINERS - Cement:

Industrialexportimport

RETRIEVERS - Junk:

Offshore Drilling Supplies Ltd.

RIGS - Combination, Spider & Rotary:

Industrialexportimport
Massarenti
Salzgitter

RIGS - Drilling, Cable Tool:

Massarenti
S M F I/Creusot-Loire

RIGS - Drilling, Portable:

Dreco Ltd.
Industria Del Hierro S.A. De C.V.
Industrialexportimport
Knoll Rig & Equip. Mfg. Company
Massarenti
Offshore Drilling Supplies Ltd.
Olympic Ironworks Ltd.
S M F I/Creusot-Loire
Salzgitter Maschinen
Vereinigte Edelstahlwerke AG
Kin Rig Mfg.

RIGS - Drilling, Rotary:

Silvio Ballarini & Company
Bharat Heavy Electricals Ltd.
Creusot-Loire Energie Developments
Dreco Ltd.
Industria Del Hierro S.A. De C.V.
Industrialexportimport
Lanzagorta/C M
Massarenti
Offshore Drilling Supplies Ltd.
Olympic Ironworks Ltd.
Kin Rig Mfg.
S M F I/Creusot-Loire
Salzgitter Maschinen
Vereinigte Edelstahlwerke
Alfred Wirth & Company KG

RIGS - Drilling, Submersible:

Industrialexport

RIGS - Exploration:

Industrialexport
Bharat Heavy Electricals Ltd.
Industrialexportimport
Massarenti
Olympic Ironworks Ltd.
S M F I/Creusot-Loire
Salzgitter Maschinen

RIGS - Hydraulic:

Industrialexportimport
Kin Rig Mfg.

RIGS - Self-Propelled:

Kin Rig Mfg.
Knoll Rig & Equip. Mfg. Company
Offshore Drilling Supplies Ltd.
Olympic Ironworks Ltd.
Salzgitter Maschinen
Vereinigte Edelstahlwerke AG

RIGS - Tubing Servicing:

Industrialexportimport
Kin Rig Mfg.
Knoll Rig & Equip. Mfg. Company
Salzgitter Maschinen

RIGS - Water Well Drilling:

Diamant Boart S.A.
Industrialexport
Massarenti
Kin Rig Mfg.
Offshore Drilling Supplies Ltd.
Salzgitter Maschinen

RIGS - Workover:

Industrialexport
Kin Rig Mfg.
Knoll Rig & Equip. Mfg. Company
Massarenti
Offshore Drilling Supplies, Ltd.
Olympic Ironworks, Ltd.
Salzgitter Maschinen
Vereinigte Edelstahlwerke AG

RIMS - Brake:

Massarenti
Offshore Drilling Supplies Ltd.
Vereinigte Edelstahlwerke AG

RINGS - Piston

Offshore Drilling Supplies Ltd.

RINGS - Pump:

Offshore Drilling Supplies Ltd.

RINGS - Stuffing Box:

OFfshore Drilling Supplies Ltd.

RISERS - Flowline:

British Steel Corporation
Paguag GmbH

RISERS - Sub-Sea:

Ateliers et Chantiers de Bretagne
British Steel Corporation
Coflexip
Comex Seal
Creusot-Loire Energie Developments
Paguag GmbH

RODS - Piston:

Industrialexportimport
Massarenti

RODS - Polished:

Drillcon Industries Ltd.
Industrialexportimport
Vereinigte Edelstahlwerke AG

RODS - Pony or Sub:

Drillcon Industries Ltd.
Industrialexportimport
Mento A/S
Vereinigte Edelstahlwerke AG

RODS - Pull:

Ceria B

RODS - Pump:

Industrialexportimport
Offshore Drilling Supplies, Ltd.

RODS - Sucker:

Drillcon Industries Ltd.
Industrialexportimport
Kuroda Precision Industries Ltd.
Vereingte Edelstahlwerke

ROLLERS - Wireline:

Tesel Services Ltd.

ROPE - Mooring:

Elkem-Spigerverket A/S
Hawkins & Tipson Ropemakers
Norsk Staaltaugfabrik
United Ropeworks
Hendrik Veder

ROPE - Wire:

Creusot-Loire/Metallurgie
Elkem-Spigerverket A/S
G K N Group
Hawkins & Tipson Ropemakers
Norsk Staaltaugfabrik
Sandvik AB
Sociedad Franco Espanola
United Ropeworks
Hendrik Veder
Vereinigte Edelstahlwerke

ROTARY TABLES -

Bharat Heavy Electricals Ltd.
Interprinderea De Utilaj Petrolier
Rauma Repola Oy, Pori Works

RUBBER - Industrial, Molded, Custom:

B T R Silvertown Ltd.
Dowty Offshore Ltd.
Gummi A/SK. Lund & Company
Hallite Ltd.
Sigma Chemie Ltd.
Stabylia
Regal Industrial Rubber CA

RUBBERS - Blowout Preventers:

B T R Silvertown Ltd.
Goes Intl. Petroleum Services Pte. Ltd.
Mento A/S
Offshore Drilling Supplies Ltd.
Sigma Chemie Ltd.
Regal Industrial Rubber CA

RUBBERS - Packer:

B T R Silvertown Ltd.
Goes Intl. Petroleum Services Pte. Ltd.
Mento A/S
Sigma Chemie Ltd.

RUBBERS - Piston:

Sigma Chemie Ltd.
Stabylia

RUBBERS - Swab:

Phoceenne De Metallurgie
Sigma Chemie Ltd.
Stabylia
Regal Industrial Rubber CA

RUBBERS - Tubing Head:

Sigma Chemie Ltd.

RUNS-METER -

Phoceenne De Metallurgie

SAMPLERS - Bottom Hold:

Friedrich Leutert GmbH & Company

SAMPLERS - Gas:

Friedrich Leutert GmbH & Company

SAMPLERS - Liquid:

C. Goldhan
Friedrich Leutert GmbH & Company
Goldhan Olfeddausrustungen

SAVERS - Oil, Wireline:

Sigma Chemie Ltd.

SAWS -

Atlas Copco AB

SCABBARDS - Casing:

Industrialexportimport
Offshore Drilling Supplies Ltd.

SCABBARDS - Kelly:

Lion Oil Tool
S M F I/Marep

SCALERS - Weld Flux & Needle:

Atlas Copco AB

SCRAPERS - Pig:

Sigma Chemie Ltd.
Siirtec
Stabylia

SCRATCHERS - Cementing:

J. Caslake Ltd.
Sea Oil SErvices Ltd.

SCREEN - Sand Control:

Goes Intl. Petroleum Services Pte. Ltd.
Thule United Ltd.

SCREEN - Mud:

Anchor Drilling Fluids A/S
Norsea A/S
Thule United Ltd.

SCREENS - Vibrating:

Industrialexportimport
Salzgitter
Thule United Ltd.

SCREEN SETTING ASSEMBLIES:

Industrialexportimport

SCRUBBERS - Gas:

J. Caslake Ltd.
Porta-Test Systems Ltd.
Goldhan Olfeddausrustungen
C. Goldhan
Robert Jenkins Oil & Gas

SCRATCHERS - Cementing:
J. Caslake, Ltd.
Industrialexportimport
Regal Industrial Rubber CA
Sea Oil Services, Ltd.
SEALS - Blowout Preventers:

Offshore Drilling Supplies Ltd.

SEALS - Gasket:

Dowty Offshore Ltd.
Lanzagorta/F I P

SEALS - Mechanical:

Comex Industries
Dowty Offshore Ltd.
Hallite Ltd.

SEALS - Packoff, Secondary:

Canada
Lanzagorta/F I P

SEALS - Rotor:

Dowty Offshore Ltd.

SEATS - Choke Stem:

Briscoe Engineering Ltd.

SEATS - Pump Valve:
Bolland & Cia
Offshore Drilling Supplies Ltd.
Vereinigte Edelstahlwerke

SEATS - Valve:

Offshore Drilling Supplies Ltd.
Lanzagorta/F I P

SENSORS - Navigation:

Ferranti Ltd.
Thomson-CSF (D A S M)

SEPARATORS - Barites:

T. I. Group
Thule United Ltd.

SEPARATORS - Cyclone:

Automatic Oil Tools Systems
Industrialexportimport
Plenty Group Ltd.
Porta-Test Systems Ltd.
Thule United, Ltd.

SEPARATORS - Defoaming:

Porta-Test Systems Ltd.
Robert Jenkins Oil & Gas

SEPARATORS - Equipment:

Porta-Test Systems, Ltd.

SEPARATORS - Filter:

GKN Group
C. Goldhan
Mento A/S
Porta Test Systems, Ltd.
Plenty Group Ltd.
Sofrance

SEPARATORS - Oil, Gas & Water:

Adamson & Hatchett
Creusot-Loire/Pressure Vessels Div.
Hydraudyne B. V.
Goldhan-Olfeldausrustungen G.M.B.H.
Non Corrosive Metal Products Ltd.
Novelles Applications Technologiques
Phoceenne De Metallurgie
Plenty Group Ltd.
Porta-Test Mfg. Ltd.
Robert Jenkins Oil 7 Gas
Serck
Siirtec
Sofrance
Swecomex, S.A.

SEPARATORS - Gas, Submersible:

Automatic Oil Tools Systems
Plenty Group Ltd.

SEPARATORS - Geothermal:

Porta Test Systems, Ltd.

SEPARATORS - Gumbo:

Thule United Ltd.

SEPARATORS - Low Temperature:

Automatic Oil Tools Systems
Creusot-Loire/Pressure Vessels Div.
C. Goldhan
Porta-Test Systems Ltd.

SEPARATORS - Metering:

Automatic Oil Tools systems
C. Goldhan
Porta-Test Systems Ltd.
Robert Jenkins Oil & Gas
Siirtec

SEPARATORS - Mud:

Industrialexportimport
T. I. Group
Thule United Ltd.
Unitor Ship Service A/S

SEPARATORS - Mud/Gas:

Porta-Test Systems Ltd.

SEPARATORS - Pipeline Crossing:

Plenty Group Ltd.
Porta-Test Systems Ltd.

SEPARATORS - Sand:

G K N Group
Plenty Group Ltd.
Porta-Test Systems Ltd.
Thule United Ltd.

SEPARATORS - Test:

Automatic Oil Tools Systems
Porta-Test Mfg. Ltd.
Porta-Test Systems Ltd.
Robert Jenkins Oil & Gas
Goldhan Olfeddausrustungen

SEPARATORS - Water:

Atlas Copco AB
Porta-Test Systems Ltd.

SERVICE - BOP Control:

North Sea Exploration Services

SERVICE - Bottom Hole Pressure:

Flopetrol

SERVICE - Csg Threading, Coupling & Testing:

North Sea Exploration Services

SERVICE - Corrosion Inhibiting:

Hoechst AG
Sandvik AB
Chemische Fabriek Servo
Sofresid

SERVICE - Drift Indicator:

Friedrich Luetert GmbH & Company

SERVICE - Electrical:

Elektro Union Offshore A/S
Holec
North Sea Exploration Services
Northern Rig Lites

SERVICE - Fishing:

North Sea Exploration Services

SERVICE - Formation Analysis:

Flopetrol

SERVICE - Gravel Pack:

North Sea Exploration Services
Sea Oil Services Ltd.
Servecio Hydrocarb

SERVICE - Hydraulic Test Unit:

Western Hydraulic

SERVICE - Mud Analysis:

CECA 1

SERVICE - Paraffin Control:

Chemische Fabriek Servo

SERVICE - Pipe Cleaning, Perforating, Slotting, Threading, Etc.:

Lion Oil Tool
Sea Oil Services Ltd.

SERVICE - Power Tong:

North Sea Exploration Services

SERVICE - Production Testing:

Flopetrol

SERVICE - Sand Control:

Flopetrol
Sea Oil Services Ltd.
Servecio Hydrocarb

SERVICE - Tubing Handling:

Flopetrol

SERVICE - Water Analysis:

Chemische Fabriek Servo

SERVICE - Well Control:

Flopetrol
Samega

SERVICE - Wireline:

Sofrance
Tesel Services Ltd.
Western Hydraulic

SERVICE - Workover, Hydraulic:

Flopetrol
Kin Rig Mfg.

SEWAGE - Treatment:

Motherwell Bridge Group
Nippon Kokan K. K.

SHACKLES:

Ansell, Jones & Company, Ltd.
Bruce International
G K N Group

SHACKLES (Cont.):

Hamanaka Chain Mfg. Company, Ltd.
Hawkins & Tipson Ropemakers
Sea Oil SErvices Ltd.
United Ropeworks
Hendrik Veder

SHAKERS - Shale:

Dreco, Ltd.
Industrialexport
Offshore Drilling Supplies Ltd.
Salzgitter Maschinen
Silvio Ballerini & Company
Thule United, Ltd.

SHEAVES - Crown-Block, Catline, Gin Pole, Etc.:

Ansell, Jones & Company, Ltd.
Dreco, Ltd.
Griffith Oil Tool Ltd.
Hendrik Veder
Massarenti

SHEAVES - Deck:

Ansell, Jones & Company, Ltd.

SHEAVES - Subsea Hose & Cable:

Ansell, Jones & Company, Ltd.

SHEAVES - V-Belt:

Vereinigte Edelstahlwerke AG

SHEAVES - Wireline:

Bharat Heavy Electricals Ltd.
Massarenti

SHELTERS - Rig:

Bharat Heavy Electrical, ltd.
Norseman Shelters Ltd.
Offshore Drilling Supplies Ltd.

SHIPBUILDING -

Ateliers et Chanteirs de Bretagne
G H H Sterkrade

SHIPS - Drill:

Ateliers et Chanteirs de Bretagne
Nippon Kokan K. K.

SHIPS - Supply:

Ateliers et Chanteirs de Bretagne
Nippon Kokan K. K.

SHOES - Casing, Fill-Up:

Equipetrol S. A.
Sea Oil Services, Ltd.

SHOES - Casing, Float & Guides:

Industrialexportimport
Equipetrol S. A.
Sea Oil Services, Ltd.
Site Oil Tool Ltd.

SHOES - Liner Cementing:

Equipetrol S. A.
Industrialexportimport
Sea Oil Services Ltd.

SHOES - Milling:

Industrialexportimport
Offshore Drilling Supplies Ltd.

SHOES - Rotary:

Equipetrol S. A.

SHOES - Tubing:

Industrialexportimport

SHOES - Washover:

Diamant Boart S. A.
Drillcon Ind. Ltd.
J. K. Smit & Sons

SHOTBLASTING - Equipment:

Atlas Copco AB
Redpath Dorman Long
Unitor Ships Services AS

SIGNALS - Fog, Offshore:

Unitor Ships Service AS

SILICONES:

Sigma Chemie Ltd.

SIMULATORS - Deep Diving:

Comex Industries

SKIDS - Steel:

A. S. Normar
Creusto-Loire Energie Developments

SKIMMERS - Oil:

C. Goldhan
Goldhan Olfeddausrustungen
Novelles Applications Technologiques
Thune-Eureka A/S

SLEEVES - Liner:

Industria Del Hierro, S. A. De C. V.
Offshore Drilling Supplies Ltd.

SLEEVES - Separation:

Lanzagorta/F I P

SLEEVES - Split Pipe Repair

Trouvay & Chauvin

SLEEVES - Stage Cementing:

Sigma Chemie Ltd.

SLINGS - Wire Rope:

Elkem-Spigerverket A/S
G K N Group
Hendrik Veder
United Ropeworks

SLIPS - Casing & Tubing

Breda Fucine
Canada

Industrialexportimport
Offshore Drilling Supplies Ltd.
Tsukamoto Seiki Co.
Vereinigte Edelstahlwerke

SLIPS - Drill Collar:

Industrialexportimport
Offshore Drilling Supplies Ltd.
Tsukamoto Seiki Co.
Vereingte Edelstahlwerke

SLIPS - Drill Pipe:

Industrialexport
Offshore Drilling Supplies Ltd.
Silvio Ballerini & C
Tsukamoto Seiki Co.
Vereinigte Edelstahlwerke AG

SLIPS - Elevator:

Farr Oil Tool
Industrialexportimport
Mento A/S
Offshore Drilling Suppliers Ltd.

SLIPS - Multiple Tubing

Breda Fucine

SLIPS - Power:

Industrialexportimport

SLIPS - Spider:

Industrialexportimport

SMELTERS - Sulphur:

Barber Industries Ltd.

SNUBBERS - Boat:

B T R Silvertown Ltd.
Sigma Chemie Ltd.

SNUBBERS - Pressure:

Sigma Chemie Ltd.

SOCKETS - Ropes:

Flopetrol
G K N Group
Hendrik Veder
United Ropeworks

SOLVENTS - Paraffin:

Sigma Chemie Ltd.

SOLVENTS - Scale:

Sigma Chemie Ltd.

SONAR - Re-Entry Tools, Downhole:

Thomson-CSF (D A S M)

SONAR - Surveying, Search, Salvage:

Dowty Offshore Ltd.
Thomson-CSF (D A S M)

SOUNDERS - Well:

Friedrich Leutert GmbH & Co.
Tesel Services Ltd.

SPEARS - Casing:

Industrialexportimport
Offshore Drilling Supplies Ltd.

SPEARS - Circulating & Releasing:

Industrialexportimport

SPEARS - Drill Collar:

Industrialexportimport
Offshore Drilling Supplies Ltd.

SPEARS - Drill Pipe:

Industrialexportimport
Offshore Drilling Supplies Ltd.

Spears - Packer:

Industrialexportimport

SPEARS - Tubing:

Industrialexportimport

SPHERES - Inflatable:

Phoceenne De Metallurgie
Sigma Chemie Ltd.
Stabylia

SPIDERS - Casing & Tubing:

Industrialexportimport
Offshore Drilling Supplies Ltd.
Vereinigte Edelstahlwerke

SPIDERS - Drill Pipe:

Industrialexportimport
Offshore Drilling Supplies Ltd.
Vereinigte Edelstahlwerke

SPINNERS - Kelly:

Arbarthorpe Oilfield Services, Ltd.
Offshore Drilling Supplies Ltd.

SPOOLING - Wireline:

Ceria
Pusnes Mekaniske Verksted
Tesel Services Ltd.
Western Hydraulic

SPOOLS - Casing Head:

Industrialemportimport

SPOOLS - Drilling:

Canada Works
Griffith Oil Tool Ltd.
Industrialexportimport
Massarenti
Offshore Drilling Supplies Ltd.
S M F I/Creusot-Loire
Van Der Horst

SPOOLS - Geothermal Heat Expansion:

Barber Industries Ltd.

SPOOLS - Tubing Hanger:

Industrialexportimport

SPROCKETS - Chain:

Bharat Heavy Electricals, Ltd.
Renold Ltd.
Vereinigte Edelstahlwerke AG

STABBERS - Casing & Elevator Pipe:

Dreco Ltd.
Sigma Chemie Ltd.

STABBERS - Pipe:

Sigma Chemie Ltd.

STABBING BOARDS:

Dreco Ltd.

STABILIZERS - Casing:

Offshore Drilling Supplies Ltd.

STABILIZERS - Cushion:

Sigma Chemie Ltd.

STABILIZERS - Dead Line:

Dreco Ltd.

STABILIZERS - Diamond:

C. H. Taylor & Co., Ltd.
Cristal Profor S. A.
Diamant Boart S. A.
Drilling & Service
Goes International Petroleum

Industrial & Mining Bit Mfg.
J. K. Smit & Sons

STABILIZERS - Drill Collar:

Biamand Boart S. A.
Griffith Oil Tool, Ltd.
Hungting Group
Industrialexportimport
Industrial & Mining Bit Mfg.
Itag

STABILIZERS - Drill Collar (Con't)

Lion Oil Tool
Silvio Ballerini & C.
S M F I/Marep
Stabylia
C. H. Taylor & Co., Ltd.
Tsukamoto Seiki Co.
Van Der Horst
Vereinigte Edelstahlwerke AG

STABILIZERS - Drill Pipe:

Diamant Boart S. A.
Equipetrol S. A.
Fubriven De Venezuela
Hunting Group
Industrialexport
Norsea AS

STABILIZERS - Integral Blade:

Diamant Boart S. A.
Equipetrol S. A.
Griffith Oil Tool Ltd.
Hunting Group
Tsukamoto Seiki Co.
Vereinigte Edelstahlwerke AG

STABILIZERS - Kelly Sub:

Diamant Boart S.A.

STABILIZERS - Mill:

Diamant Boart S.A.
Lion Oil Tool

STABILIZERS - Non-Magnetic:

Hunting Group
S M F I/Marep
Vereinigte Edelstahlwerke AG

STABILIZERS - Packed Hole:

Diamant Boart S.A.
Griffith Oil Tool Ltd.

STABILIZERS - Replaceable Pad:

Equipetrol S. A.
Lion Oil Tool

STABILIZERS - Rubber:

B T R Silvertown Ltd.
Sigma Chemie Ltd.

STABILIZERS - Rubber (Con't)

S M F I/Marep
Stabylia

STABILIZERS - Sleeve:

Diamant Boart S. A.
Drilling & Service
Equipetrol S. A.
Lion Oil Tool
S M F I/Marep
Tsukamoto Seiki Co.

STABILIZERS - Spiral Blade:

Diamant Boart S. A.
Griffith Oil Tool Ltd.
Hunting Group
Vereinigte Edelstahlwerke AG

STABILIZERS - Tubing:

Diamant Boart S. A.

STACKS - Blowout Preventer, Sub-Sea:

Industrialexportimport
Van Der Horst Asia Pte. Ltd.

STAIR - Steel:

Arbarthorpe Oil Services Ltd.

STANDPIPES - Mud Line:

Bharat Heavy Electricals Ltd.
Brisco Engineering Ltd.
Dreco Ltd.
Olympic Ironworks Ltd.

STATIONS - Compressor:

Proceenne De Metallurgie
Unitor Ships Service A. S.

STEEL - Custom:

Compagnie Francaise Des Aciers Speciaux
Export Oil Field Supply
Usinor

STEEL - Plate:

Companie Francaise Des Aciers Speciaux
G K N Group
Nippon Kokan K. K.
Sandvik AB
Sumitomo Metal Industries, Ltd.
Usinor

STEEL - Stainless:

Sandvik AB

STEEL - Stockholders:

Compagnie Francaise Des Aciers Speciaux
G K N Group
Sandvik AB
James Fairley Steels
T. I. Group

STEEL - Structural:

British Steel Corporation
Compagnie Francaise Des Aciers Speciaux
Itag
Nippon Kokan K. K.
A/S Raufoss
Redpath Dorman Long Ltd.
Usinor

STEMS - Drill, Big Hole:

Massarenti

STOPS - Collar:

Sea Oil Services Ltd.

STRAINERS - Gas:

Automatic Oil Tools Systems
Porta-Test Systems Ltd.

STRAINERS - In-Line:

Automatic Oil Tools Systems
Porta-Test Systems, Ltd.

STRAINERS - Pipe, Air, Oil, Steam, Water:

Automatic Oil Tool Systems
J. Caslake Ltd.
Phoceenne De Metallurgie
T. I. Group

STRAPS - Tong:

Offshore Drilling Supplies, Ltd.

STRIPPERS - Tubing, Casing & Drill Pipe:

Goes International Petroleum Services Pte. Ltd.

STRUCTURES - Offshore, Articulated:

Equipements Mecaniques et Hydrauliques
Intermare Sarda
Kawasaki Steel Corp.

STUDS:

Elkem-Spigerverket A/S
G K N Group
Trouvay & Cauvin

STUDS - Fluid End Pump:

Industria Del Hierro, S. A. De C. V.

STUDS - Hydraulically Operated:

Doncasters Moorside Ltd.

SUBMERSIBLE - Dry Transfer:

Comex Industries

SUBS - Bumper:

Griffith Oil Tool Ltd.
Lion Oil Tool
Offshore Drilling Supplies Ltd.
C. H. Taylor & Co., Ltd.

SUBS - Bumper, Sub-Sea:

C. H. Taylor & Co., Ltd.

SUBS - Casing & Tubing:

British Steel Corp.
Dalmine
Drillcon Ind. Ltd.
Hamblin & Glover Oilfield Services Ltd.
Industrialexportimport
Massarenti
Site Oil Tool, Ltd.
Vereinigte Edelstahlwerke AG

SUBS - Circulating:

Hunting Group
Lion Oil Tool

SUBS - Drill Collar:

Breda Fucine
Drillcon Industries Ltd.
Industrialexportimport
Lion Oil Tool
Massarenti
S M F I/Marep
Seaco
C. H. Taylor & Co., Ltd.
Vereinigte Edelstahlwerke AG

SUBS - Drill Pipe:
Breda Fucine
Drillcon Industries, Ltd.
Industrialexportimport
Lion Oil Tool
Massarenti
Offshore Drilling Supplies Ltd.
Sea Oil Services Ltd.
Seaco
Vereinigte Edelstahlwerke

SUBS - Equalizing:

Vereinigte Edelstahlwerke

SUBS - Junk:

Equipetrol S. A.
Hunting Group
Lion Oil Tool
S M F I/Marep

SUBS - Kelly Saver:

Breda Fucine
Drillcon Industries Ltd.
Lion Oil Tool
S M F I/Marep
Massarenti
Sea Oil Services Ltd.
Vereinigte Edelstahlwerke

SUBS - Lifting:

Breda Fucine
Drillcon Industries Ltd.
Ethyd
Hamblin & Glover Oilfield Services
Hunting Group

SUBS - Lifting (Con't)

Lion Oil Tool
S M F I/Marep
Sea Oil Services Ltd.
Vereinigte Edelstahlwerke

SUBS - Orientation:

Drillcon Industries Ltd.

SUBS - Top:

Equipetrol S. A.
Lion Oil Tool

SUB-STRUCTURES - Derrick, Mast & Rig:

Bharat Heavy Electricals, Ltd.
Comex Seal
Dreco, Ltd.
Industrialexport
Industrial Del Hierro S. A. de C. V.
Olympic Ironworks Ltd.
Silvio Ballerini & C.
Massarenti

SUCKER - Rods & Couplings:

Avan S.A.I.C.
Cometarsa S.A.I.C.
Drillcon Industries Ltd.
Stelco, Inc.
Vereinigte Edelstahlwerke A.G.

SUCKER - Rod Gages:

Alameda Gage Corp.
Kuroda Precision Industries Ltd.
TI Coventry Gauge Ltd.
Tru-Thread Ltd.

SUPPORTS - Pipe:

Nippon Kokan K. K.

SURFACANTS:

Hoechst AG
Sigma CHemie Ltd.

SURVEYS - Directional:

Friedrich Leutert GmbH & Co.
Tesel Services, Ltd.
Western Hydraulic

SURVEYS - Gyroscopic Directional:

Friedrich Leutert GmbH

SURVEYS - Magnetic:

Friedrich Leutert GmbH

SURVEYS - Pressure Bottom Hole:

Friedrich Leutert GmbH

SURVEYS - Temperature, Bottom Hole:

Friedrich Leutert Gmbh & Co.
Tesel Services, Ltd.

SWABS & PARTS:

Sigma Chemie Ltd.

SWITCHES - Daylight Sensitive:

GEC Machines

SWITCHES - Electrical:

Ateliers de Contructions Electriques
Dowty Offshore Ltd.
Elektro Union Offshore
Holec
Northern Rig Lites
T. I. Group

SWITCHES - Engine Safety:

Ateliers de Constructions Electriques
Dowty Offshore Ltd.

SWITCHES - Float:

Brisco Engineering, Ltd.
GEC Elliott Control Valves Ltd.
T. I. Group

SWITCHES - Limit:

Costruzioni Hydro-Pneumatic

SWITCHES - Pilot:

Brisco Engineering Ltd.

SWITCHES - Pneumatic:

Brisco Engineering Ltd.

SWITCHES - Pressure:

Brisco Engineering Ltd.
Bronzavia
GEC-Elliot Control Valves Ltd.
T.I. Group

SWITCHES - Pumping Unit Cut-Off:

Brisco Engineering Ltd.

SWITCHGEAR:

Ateliers de Constructions Electriques
Bharat Heavy Electricals Ltd.
Elektro Union Offshore A/S
T. I. Group

SWIVELS - Cargo:

Ansell, Jones & Co., Ltd.
Hendrik Veder

SWIVELS - Casing Rotating:

Offshore Drilling Supplies Ltd.

SWIVELS - Chains:

Ansell, Jones & Co., Ltd.
Hamanaka Chain Mfg. Co., Ltd.

SWIVELS - Drilling:

Bharat Heavy Electrical, Ltd.
Dreco Ltd.
Industrialexportimport
Lanzagorta/CM
Massarenti
Offshore Drilling Supply Ltd.
Salzgitter
Silvio Ballerini & C.
Vereinigte Edelstahlwerke AG

SWIVELS - Drilling, Large Diameter:

Industrialexport
Lanzagorta/C M

SWIVELS - Line:

CBV
Equipement Petrolier
Itag
Niigata Engineering Co.
Vitro, S. A.

SWIVELS - Power:

Industrialexportimport
Massarenti

SWIVELS - Rotary Hose:

Alfred Wirth & Co. KG
Wirth Maschinen-Und Bohrgerate-Fabrik

SWIVELS - Tubing:

Alfred Wirth & Co. KG
Industrialexportimport

SYSTEMS - AC-DC Power Conversion:

Bharat Heavy Electrical, Ltd.
Elektro Union Offshore A/S

SYSTEMS - Acoustic Ship-Positioning:

Dowty Offshore Ltd.
Thomson CSF (D A S M)

SYSTEMS - Air Package:

Bharat Heavy Electrical, Ltd.
G K N Group
Sigmund Pulsometer Pumps
Unitor Ships Service AS

SYSTEMS - Automation:

Ateliers de Constructions Electriques
Brisco Engineering Ltd.
Elektro Union Offshore A/S
Ferranti Ltd.
GEC Elliott Process Automation Ltd.
Matra Offshore

SYSTEMS - BOP Control:

Brisco Engineering, Ltd.
Industrialexportimport
Matra Offshore

SYSTEMS - BOP Control, Acoustic:

Matra Offshore
Thomson-CSF (D A S M)

SYSTEMS - Central:

Unitor Ships Service A. S.

SYSTEMS - Control Air:

Atlas Copco AB

SYSTEMS - Computer Control:

Ferranti Ltd.
GEC-Elliott Process Automation Ltd.
Matra Offshore
Samega

SYSTEMS - Cutting Washing:

Thule United Ltd.

SYSTEMS - Data Acquisition:

Elektro Union Offshore A/S
GEC-Elliott Process Automation Ltd.
Matra Offshore
Samega

SYSTEMS - Drill Collar Handling:

Arbarthorpe Oilfield Services, Ltd.
A/S Moelven Brug
Griffith Oil Tool Ltd.

SYSTEMS - Dynamic Positioning:

CIT Alcatel
GEC Electrical Projects Ltd.
Thomson-CSF AVS
Thomson-CSF (D A S M)

SYSTEMS - Electrical:

Ateliers et Chanteirs de Bretagne
Bharat Heavy Electrical, Ltd.
Dowty Offshore Ltd.
Elektro Union Offshore A/S
GEC Electrical Projects Ltd.
Holec
Jeumont-Schneider
Northern Rig Lites
T.I. Group

SYSTEMS - Fire Shut-in:

Unitor Ships Service AS

SYSTEMS - Geothermal Steam Control:

Porta-Test Systems, Ltd.

SYSTEMS - Heat Transfer:

G K N Group
Novelles Application Technologiques

SYSTEMS - Hydraulic Break-Out

Hydraudyne B. V.

SYSTEMS - Hydraulic Power:

A. S. Bergens Mekaniske Verk
Brisco Engineering Ltd.
Ceria
Dowty Offshore Ltd.
Ethyd
GEC Mechanical Handling
Hydraudyne B. V.
Olympic Ironworks, Ltd.
Costruzioni Hydro-Pneumatic
Van Der Horst
Western Hydraulic

SYSTEMS - Hydraulic Pumping:

Ceria B.
Dowty Offshore Ltd.
Hydraudyne B. V.
Sigmund Pulsometer Pumps

SYSTEMS - Liquid Storage & Transfer

New-mar Services Ltd.

SYSTEMS - Mud:

CECA 1
Silvio Ballerini & C.
Bharat Heavy Electrical Ltd.
Dreco Ltd.
Industrialexport
Industria Del Hierro S. A. De C. V.
Unitor Ships Service AS

SYSTEMS - Mud Cuttings, Handline & Washing:

Thule United Ltd.
Unitor Ships Service A. S.

SYSTEMS - Oil Recovery:

G K N Group
Lockheed Petroleum Services Ltd.
Novelles Applications Technologiques
Unitor Ships Service AS

SYSTEMS - Orifice Measurement:

Brisco Engineering Ltd.

SYSTEMS - Pipe Handling:

Arbarthorpe Oilfield Services Ltd.
Ateliers et Chanteirs de Bretagne
Drilltec GmbH
Sigma Chemie Ltd.
A/S Moelven Brug
A. S. Normar
Olympic Ironworks, Ltd.
Phoceenne De Metallurgie
Pronal

SYSTEMS - Power Pipe Handling:

Ateliers et Chanteirs de Bretagne

SYSTEMS - Production, Automated:

Brisco Engineering, Ltd.
Hubner Gray GmbH
Matra Offshore
Porta-Test Systems, Ltd.

SYSTEMS - Production, Sub-Sea:

Ateliers et Chanteirs de Bretagne
British Steel
Comex Seal
Lockheed Petroleum Services Ltd.
Matra Offshore

SYSTEMS - Reverse Circulation:

Industrialexportimport
Massarenti

SYSTEMS - Rig Skidding:

Brisco Engineering Ltd.
Brissonneau & Lotz Marine
Hydraudyne B. V.
Norseman Shelters Ltd.
Ohemco
Olympic Ironworks, Ltd.

SYSTEMS - Safety Valves Sub-Surface:

Brisco Engineering Ltd.
Costruzioni Hydro-Pneumatic
Flopetrol
France Operator

SYSTEMS - Safety Valves Surface:

Brisco Engineering Ltd.
France Operator
Costruzioni Hydro-Pneumatic

SYSTEMS - Salt Water Disposal:

G K N Group

SYSTEMS - Sewage & Waste Water Treatment:

G K N Group
Novelles Applications Technologiques
Sigma Chemie Ltd.

SYSTEMS - Subsea BOP Control:

Matra Offshore

SYSTEMS - Subsea Conductor Pipe:

British Steel Corp.

SYSTEMS - Subsea Well Control:

Brisco Engineering Ltd.
Comex Seal
Lockheed Petroleum Services Ltd.
Matra Offshore

SYSTEMS - Survival Offshore:

Unitor Ships Service SA

SYSTEMS - Telemetry:

Ferranti Ltd.
GEC-Elliott Process Automation Ltd.
Matra Offshore
Thomson-CSF (D A S M)

SYSTEMS - Thermal Recovery:

Novelles Applications Technologiques

SYSTEMS - Unloading:

Thule-Eureka AS

SYSTEMS - Vessel Position:

A. S. Bergens Mekaniske Verk
Thomson-CSF AVS

SYSTEMS - Well Control:

Brisco Engineering Ltd.

SYSTEMS - Well Control (Con't)

Lanzagorta/F I P
Matra Offshore

SYSTEMS - Wire Line Grease Injection:

Flopetrol

TABLES - Rotary:

Silvio Ballerini & C.
Bharat Heavy Electricals Ltd.
Dreco Ltd.
Industrialexportimport
Lanzagorta International Inc.
Massarenti
Salzgitter
Unitor Ships Service AS
Vereinigte Edelstahlwerke AG
Alfred Wirth & Co. KG
Wirth Machinen-Und Bohrgerate-Fabrick

TANKERS - Floating Storage:

Ateliers et Chanteirs de Bretagne
Nippon Kokan K. K.

TANKS - Cryogenic:

Motherwell Bridge Group
Nippon Kokan K. K.

TANKS - Filter:

New-mar Oil Services Ltd.

TANKS - Fuel:

Bharat Heavy Electrical Ltd.
Motherwell Bridge Group
New-mar Oil services, Ltd.
Nippon Kokan K. K.
Norseman Shelters Ltd.
Olympic Ironworks, Ltd.
Sigma Chemie Ltd.

TANKS - LPG:

Adamson & Hatchett
Motherwell Bridge Group
Nippon Kokan K. K.

TANKS - Meter Calibrating:

New-mar Oil Services Ltd.

TANKS - Mud:

Anchor Drilling Fluids A/S
Bharat Heavy Electronics Ltd.
Dreco Ltd.
Industrialexportimport
Itag
Lanzagorta/CM
Massarenti
New-Mar Oil Services Ltd.
Offshore Drilling Services, Ltd.
Olympic Ironworks, Ltd.
Rotator Norway AS
Silvio Ballerini & C.
Sigma Chemie Ltd.

TANKS - Oil Treating:

Nippon Kokan K. K.

TANKS - Portable:

Goes International Petroleum Services
Pte. Ltd.
Kleber
New-mar Oil Services Ltd.
Norseman Shelters Ltd.
Olympic Ironworks, Ltd.
Sigma Chemie Ltd.

TANKS - Storage:

Adamson & Hatchett
Arbarthorpe Oilfield Services Ltd.
Industrialexportimport
Kleber
Motherwell Bridge Group
New-mar Oil Services
Olympic Ironworks, Ltd.
Sigma Chemie Ltd.

TANKS - Testing:

Nippon Kokan K. K.
Sigma Chemie Ltd.

TANKS - Water:

Bharat Heavy Electricals, Ltd.
Kleber
New-mar Oil Services, Ltd.
Nippon Kokan K. K.
Norseman Shelter Ltd.
Olympic Ironworks, Ltd.
Sigma Chemie Ltd.

TEES - Cross:

Industrialexportimport

TEES - Cross (Con't)

Breda Fucine
Canada
Lanzagorta/F I P

TEES - Flow:

Breda Fucine
Canada Works
Hubner Gary GmbH
Lanzagorta/F I P
Phoceenne De Metallurgie

TEES - Pumping:

Breda Fucine
Industrialexportimport

TELECOMMUNICATIONS:

Elektro Union Offshore A/S
Ferranti Ltd.
Jeumont-Schneider
Matra Control Systems Div.

TELEPHONES:

Elektro Union Offshore A/S
GEC Electrical Projects Ltd.
Matra Control Systems

TELEPHONES - Underwater:

Comex Industries
Norsea A/S

TELEVISION - Underwater:

Norsea A/S

TENSIONERS - Guideline:

Hydraudyne B. V.
Van Der Horst Asia Pte. Ltd.

TENSIONERS - Pipelaying:

Ceria
Hydraudyne B. V.
Wharton Engineers

TENSIONERS - Riser, Subsea:

Hydraudyne B.V.
Van Der Horst Asia Pte. Ltd.
Wharton Engineers

TENSION - Meters, Rope & Meter:

GEC Mechanical Handling

TERMINALS - Electrical:

Klippon Electricals Ltd.

TESTERS - Blow Out Preventers:

Van Der Horst Asia Pte. Ltd.

TESTERS - Dead Weight:

Brisco Engineering Ltd.
Porta-Test Systems Ltd.

TESTERS - Formation:

Basset-Bretagne-Loire
Tesel Services Ltd.

TESTERS - Hydraulic:

Brisco Engineering Ltd.
Hydraudyne B.V.
Western Hydraulic

TESTERS - Multiple Zones:

Porta-Test Systems Ltd.

TESTERS - Oil-Gas Ratio:

Basset-Bretagne-Loire
C. Goldhan
Porta-Test Mfg. Ltd.

TESTERS - Well Production:

Flopetrol
C. Goldhan
Porta-Test Mfg. Ltd.

TESTING - Hydrostatic Pressure:

Brisco Engineering Ltd.
Costruzioni Hudro-Pneumatic
Van Der Horst Asia Pte. Ltd.

TESTING - Mud:

Anchor Drilling Fluids A/S

TESTING - Well:

Basset-Bretagne-Loire
Flopetrol
Porta-Test Systems Ltd.
Tesel Services Ltd.

THERMOMETERS - Recording:

Friedrich Leutert GmbH & Co.
Samega

THERMOSTATS:

Friedrich Leutert GmbH & Co.

THERMO COUPLES:

Klippon Electricals Ltd.

THIMBLES:

Hawkins & Tipson Ropemakers
United Ropeworks
Hendrik Veder

THINNERS - Drilling Mud:

CECA SA
Norsk Hydro
Sigma Chemie Ltd.

THRUSTERS - Marine:

Ateliers et Chanteirs de Bretagne
Ceria

TONGS - Backup:

Farr International Co., Ltd.

TONGS - Casing, Drill Pipe & Tubing:

Farr International Co., Ltd.
Goes International Petroleum Co.
Industrialexportimport
Mento A/S
Offshore Drilling Supplies Ltd.
Tsukamoto Seiki Co.
Vereinigte Edelstahlwerke

TONGS - Chain:

Arbarthorpe Oilfield Services Ltd.
Industrialexport

TONGS - Drill Pipe Spinning:

Offshore Drilling Supplies Ltd.

TONGS - Macroni:

Farr International Co., Ltd.

TONGS - Pipe:

Farr International Co., Ltd.
Industrialexport
Offshore Drilling Supplier Ltd.
Tsukamoto Seiki Co.

TONGS - Pipe Pulling:

Farr International Co., Ltd.

TONGS - Power:

Farr International Co., Ltd,
Industrialexport
Offshore Drilling Supplier, Ltd.

TONGS - Sucker Rod, Powered:

Industrialexportimport

TOOLS - Back Pressure Valve Removal:

Canada
Canada Works
Industrialexport

TOOLS - Back-Off:

Tesel Services Ltd.

TOOLS - Fishing:

Equipetrol S.A.
Friffith Oil Tool Ltd.
Industrialexport
Lion Oil Tool
Offshore Drilling Supplies Ltd.
Norsea A/S

TOOLS - Fishing, Cable Tool:

Industrialexportimport
Massarenti
Unitor Ships Service AS

TOOLS - Pipe:

Arbarthorpe Oilfield Services Ltd.
Ateliers Demoor S.A.
Farr International, Ltd.
Goes International Petroleum Services Pte. Ltd.
Offshore Drilling Supplies, Ltd.

TOOLS - Drill Stem Test:

McAllister & Associates

TOOLS - Drilling:

Empresas Mito Juan

TOOLS - Hand:

Saut-Du-Tarn
Unitor Ships Services AS

TOOLS - Pipe Beveling, Cutting & Threading:

Ateliers Demoor S.A.
Unitor Ships Service AS
Vallourec Export

TOOLS - Power:

Unitor Ships Service AS

TOOLS - Pneumatic:

Atlas Copco AB
Unitor Ships Services

TOOLS - Pulling, Hydraulic:

Hydraudyne B.V.

TOOLS - Pumpdown:

Unitor Ships Services AS

TOOLS - Running & Retrieving, Sub-Sea:

Comex Seal

TOOLS - Vibration:

Geomecanique

TOOLS - Wire Rope Cutting:

Unitor Ship Services AS

TORCHES - Welding & Cutting:

GKN Group
Unitor Ships Services

TOWERS - Access:

Verhoef Aluminum Scheepsbouwindustrie

TOWERS - Service:

Verhoef Aluminum Scheepsbouwindustrie

TOWERS - Sulphur Pouring:

Barber Industries, Ltd.

TOWING - Systems:

Skagit Corp.
Wharton Engineers

TRAILERS - Field, Office, Crew, etc.:

Tavernier-Houdy

TRAILERS - Mud Logging:

Samega
Tavernier-Houdy

TRAILERS - Mud Pump:

Dreco Ltd.
Tavernier-Houdy

TRAILERS - Portable Rig:

Dreco Ltd.
Kin Rig Mfg.
Massarenti

TRAILERS - Power Plant:

Bertel O. Steen A/S
Industrialexportimport
Tavernier-Houdy

TRAILERS - Wireline:

Flopetrol

TRAILERS - Rockover:

Dreco Ltd.

TRAINING - Personnel:

Anchor Drilling Fluids A/S
CECA SA
Flopetrol

TRANDUCERS:

Thomson-CSF (D A S M)

TRANSFORMERS:

Ateliers de Contructions Electriques de Charleroi
Elektro Union Offshore A/S
Jeumont-Schneider
Northern Rig Lites

TRANSMISSIONS:

Voith Getriebe

TRANSMITTERS - Mud Flo Rate:

Samega

TRAPS - Line Scraper:

Itag
Phoceenne De Metallurgie

TRAPS - Sand:

Industrialexport
Olympic Ironworks Ltd.

TRAPS - Scraper:

Siirtec

TREATERS - Combination Oil & Gas:

C. Goldhan
Robert Jenkins Oil & Gas
Siirtec

TREATERS - Crude Oil:

Siirtec

TREATERS - Electrochemical:

C. Goldhan

TREATERS - Emulsion:

C. Goldhan
Robert Jenkins Oil & Gas

TREATERS - Metering:

C. Goldhan
Siirtec

TREATERS - Water:

GKN Group

TRUCKS - Cement:

Industrialexportimport

TRUCKS - Logging:

Tesel Services Ltd.

TRUCKS - Perforating:

Tesel Services Ltd.

TRUCKS - Rigs:

Kin Rig Mfg.

TRUCKS - Wireline:

ASEP BV Holland
Flopetrol
Tesel Services Ltd.

TUBES - Barrel:

Diamant Boart S.A.
T.I. Group
Vallourec

TUBES - Boiler & Condenser:

Hoesch Roehrenwerke
Mannesman Handel AG
Mannesman Roehren-Werke AG
Nippon Kokan K.K.
Sandvik AB
T.I. Group

TUBES - Finned:

Nippon Kokan K.K.
Sumitomo Metal Industries, Ltd.
Vallourec

TUBES - Flow:

Phoceenne De Metallurgie
Sumitomo Metal Industries, Ltd.
T.I. Group

TUBES - Venturi:

Phoceenne De Metallurgie

TUBING - Capillary:

Vallourec Export

TUBING - Concentric:

Nippon Steel Corp.

TUBING - Control Line:

Nippon Steel Corp.

TUBING - Fiberglass:

Ketech
Sepma
Trouvay & Cauvin

TUBING - Instrument:

Sandvik AB
T.I. Group

TUBING - Integral Joint:

British Steel Corporation
Dalmine
Mannesman Mann Handel AG
Mannesmann Roehren-werke AG
Nippon Steel Corp.
United Casing Steel & Pipe Ltd.
Vallourec Export

TUBING - Oil & Gas Well:

British Steel Corp.
Dalmine
Drillcon Industries Ltd.
GKN Group
Hamblin & Glover Oilfield Services Ltd.
Kawasaki Steel Corp.
Mannesmann Handel AG
Mannesmann Roehren-werke AG
Nippon Kokan
Nippon Steel Corp.
Norsea A/S
Offshore Drilling Suppliers, Ltd.
Sandvik AB
Sumitomo Metal Industries
United Casing Steel & Pipe Ltd.
Vallourec Export

TUBING - Steel, Seamless:
Algoma Steel Corp.
British Steel Corp.
James Fairley Steels
G K N Group
Kawasaki
Kuroda Precision
Mannesmann Handel AG
Mannesmannrohren-Werke
Nippon Kokan
Nippon Steel Corp.
Sandvik AB
Sumitomo Metal Industries
Trouvay & Cauvin
United Casing Steel & Pipe, Ltd.
Vallourec Export
TUNGSTEN-CARBIDE:

Lion Oil Tool
S M F I/Marep

TURBINES - Steam or Gas:

Bharat Heavy Electricals Ltd.
Creusot-Loire Energie Developments
GEC Gas Turbines Limited
Hispano-Suiza

TURBINES - Steam or Gas (Con't)

Klockner-Humboldt-Deutz
Mitsui Eng. & Shipbuilding
Nippon Kokan K.K.
Ruston Gas Turbines
Thomassen

TURNBACKS - Wireline:

Stabylia

UNDERREAMERS:

Drilling & Service

UNIONS - Hammers:

CBV
Equipement Petrolier
Goes International Petroleum Service Pte. Ltd.
Itag Celle
Kurt Kohorn
Niigata Engineering Co.
Offshore Drilling Supplies, Ltd.
Phoceenne De Metallurgie
Vitro, S.A.
UNIONS - High Pressure:

Brisco Engineering Ltd.
CBV
Equipement Petrolier
Itag Celle
Kurt Kohorn Ltd.
T.I. Group
Vitro, S.A.

UNIONS - Lug:

Arbarthorpe Oilfield Services Ltd.
C.B.V.
Equipement Petrolier
Kurt Kohorn Ltd.
Niigata Engineering Co.
Vitro, S.A.

UNIONS - O-Ring:
Dowty Offshore Ltd.

UNIONS - Orifice:

Phoceenne De Metallurgie

UNIONS - Pipe:

Itag Celle
Sandvik AB
T.I. Group

UNIONS - Quick:

Itag Celle

UNIONS - Welding:

Itag Celle
Kurt Kohorn Ltd.
Phoceenne De Metallurgie
Sandvik AB

UNITS - Blowout Preventor Operating:

Industrialexport

UNITS - Combo, Heating & Separting:

C. Goldhan
Novelles Applications Technologiques

UNITS - Desalting:

Robert Jenkins Oil & Gas

UNITS - Dry Dessicants:

Sigma Chemie Ltd.

UNITS - Gravel Packing:

Sea Oil Services Ltd.

UNITS - Hydraulic Power

Brisco Engineering Ltd.
Ceria
Dowty Offshore Ltd.
Ethyd
Farr International Co. Ltd.
Flopetrol
GEC Mechanical Handling
Costruzioni Hydro-Pneumatic
Hydraudyne B.V.
Pusnes Mekaniske Verksted
Rotator Norway A.S.
Bertel O. Steen A/S
Wharton Engineers
Olympic Ironworks, Ltd.

UNITS - Hydraulic Power, Portable:

Automotive Products Ltd.
Doncasters Moorside Ltd.
Dowty Cffshore Ltd.
Farr International Co., Ltd.
Flopetrol
Hydraudyne B.V.

UNITS - Hydraulic Power, Portable (Con't)

Costruzioni Hydro-Pneumatic
Wharton Engineers

UNITS - Hydrocarbon Recovery:

Novelles Applications Technologiques

UNITS - Offshore, Production Platform:

Ceria B
Creusot-Loire/Pressure Vessels Div.
Equipements Mecaniques et Hydrauliques
Industrialexportimport
Motherwell Bridge Group
Oil Industry Services AS
Porta-Test Systems, Ltd.
Seamore Oil & Gas Processing
Siirtec

UNITS - Packer Sealing:

Okgt
Sigma Chemie Ltd.

UNITS - Production Service:

ACEP
Industrialexportimport
Novelles Applications Technologiques
Porta-Test Mfg. Ltd.

UNITS - Pumping:

Ceria B
Creusot-Loire Energie Developments
GEC Gas Turbines Ltd.
Goes International Petroleum Services Pte. Ltd.
Industrialexport
OPI, Inc.
Ruston Gas Turbines
Salzgitter Maschinen
Bertel O. Steen A/S

UNITS - Pumping, Hydraulic:

Automotive Products Ltd.
Ceria B
Dowty Offshore Ltd.
Hydraudyne B.V.

UNITS - Pumping, Sucker Rod:

Salzgitter

UNITS - Ship Propulsion:

ACEP
Ateliers et Chanteirs de Bretagne
Ceria
Dowty Offshore Ltd.
Bertel O. Steen A/S

UNITS - Skid Mounted Pumping:

ACEP
Ceria B
Industrialexportimport
Salzgitter Maschinen
Bertel O. Steen A/S

UNITS - Snubbing:

B T R Silvertown Ltd.
Flopetrol

UNITS - Stage Separation:

C. Goldhan
Robert Jenkins Oil & Gas
Novelles Applications Technologiques
Porta-Test Systems Ltd.

UNITS - Sulphur Recovery

Barber Ind. Ltd.

UNITS - Tubing Service:

Industrialexportimport

UNITS - Vapor Recovery:

Novelles Applications Technologiques

UNITS - Well Acidizing & Fracturing:

Flopetrol
Industrialexport

UNITS - Well Cementing:

Industrialexportimport

UNITS - Well Servicing:

Industrialexport
Salzgitter Maschinen
Flopetrol
Vereinigte Edelstahlwerke

UNITS - Wireline:

ASEP BV Holland
Offshore Drilling Supplies, Ltd.
Tesel Services Ltd.
Flopetrol

VALVES:

Argus Gesellschaft M.B.H.
Borsig GmbH
Borsig Hartmann Valve Ltd.
Breda Fucine SpA
Brdr Christensens Haner A/S
BSL Bignier Schmid-Laurent
COMETNA, Companhia Metalurgica Nacional S.A.R.L.
Robert Cort & Son Ltd.
Daisho Valve Industry Co., Ltd.
Deer Park Engineering Pty. Ltd.
Deutsche Audco GmbH
Dewrance MacNeill & Company, Ltd.
Dip.-Ing. Werner Hartmann KG
EFACEC - Empresa Fabril de Maquinal Electricas
FAVRA, S.A.I.C.
FIP, S.A. de C.V.
Galli & Cassina S.R.L.
Grondona, S.p.A.
Grove Italia S.p.A.
Haruta Valve Mfg. Co., Ltd.
Herman von Rautenkranz Internationale Tiefbohr BmbH & Co., KG ITAG
Hirata Valve Industry, Ltd.
Hisaka Works, Ltd.,
Hitachi Metals, Ltd.
Hubner-Gray Machinen-und AG M.B.H.
IBRAVE-Industrias Brasileiras de Valvulas e Equipamentos Ltda.
IMS-Industria Metalurgica de Salvador S.A.
Ishida Valve Mfg. Co., Ltd.
Izumi Seisakusho Co., Ltd.
Japan Steel Works Ltd.
Jinn Lung Motor Co., Ltd.
John Valves Division Wornald International
Keystone Cannon Ltd.
K.K. Itabashi Kikai Seisakusho
Kinka Kikai Co., Ltd.
Kitamura Valve Mfg. Co., Ltd.
Kitazawa Valve Company Ltd.
Kobe Steel, Ltd.
Kubota, Ltd.
Malbranque Serseg Valve Pressure Vessel Department
Mannesmann Demag Meer
MAPEGAZ S.A.
Marwin Limited

VALVES (Contd.)

Mecafrance S.A.
Merex Argentina S.A.
Metalghisi
Mitsumoto Valve Mfg. Co., Ltd.
Munro & Miller Fittings Ltd.
Nakamura Metallic Industry Co., Ltd.
New Zealand Valve Company Ltd.
Nihon Koso Industry Co., Ltd.
Nippon Ball Valve Co., Ltd.
Nippon Chuzo Kabushiki Kaisha
Nippon Daiya Valve Co., Ltd.
Nippon Kokan Kabushiki Kaisha
Nippon Valqua Industries, Ltd.
Nuovo Pignone, S.p.A.
Okano Valve Mfg. Co., Ltd.
O.N. Industries Ltd.
ORION Officine Meccaniche Specializzate S.p.A
Osaka Valve Co., Ltd.
Pan-Korea Metal Industrial Co., Ltd.
PERAR S.p.A.
Petrovalves S.r.l.
RAIMONDI S.p.A.
B.C. Richards & Co. Pty. Ltd.
SAAB-SCANIA AB
Sella, S.p.A.
Serck Audco Pty., Ltd.
Serck Audco Valves
Shikoku Metal Industries Co., Ltd.
Showa Valve Co., Ltd.
Societe Nouvelle du Saut du Tarn
Stream-Flo Industries Ltd.
TA-Esco A/S
Takamisawa Koki Mfg. Co., Ltd.
TFW Techniflow s.p.a.
Thevignot S.A., Ets
Thomassen Amsterdan b.v.
T.K. Valve Limited
Tormene s.n.c.
Toyo Valve Co. Ltd.
Triangle Valve Co.' Ltd.
Universal de Valvulas, S.A.
Utsue Valve Co., Ltd.
VAG-Armaturen GmbH
Valfisa, S.A.
VALVOSIDER s.r.l.
Valvulas Belg de Mexico, S.A.
Valvulas y Conexiones, S.A.
Vannes Darling France Sarl
Wakai Valve Mfg. Co., Ltd.
Walthon Weir Pacific, S.A.
Wilh. Bitter, Armaturenfabrik
Yoneda Kogyo Co., Ltd.
Yoneki Valve Co., Ltd.
Zimmerman & Jansen G.m.b.H.

VALVES - Air:
Atlas Copco AB
Kurt Kohorn Ltd.
Lanzagorta/Panaval
Lanzagorta/F M C A
New-Mar Oil Services Ltd.
Okgt
Serck Audco Valves

VALVES - Angle:

Brisco Engineering Ltd.
Costruzioni Hydro-Pneumatic
GEC Elliott Control Valves Ltd.
Kurt Kohorn Ltd.
Lanzagorta/Magnaval
Lanzagorta/F M C A
Rotator Norway

VALVES - Automatic Shut-off:

France Operator
Kurt Kohorn Ltd.
Serck Audco Valves

VALVES - Back Pressure:

Breda Fucine
Canada Works
Industrialexportimport
Kurt Kohorn Ltd.

VALVES - Balanced Stem:

Breda Fucine
Kurt Kohorn Ltd.
Lanzagorta/FIP

VALVES - Ball:

Barber Industries, Ltd.
Breda Fucine
Brisco Engineering, Ltd.
GEC-Elliott Control Valves, Ltd.
Goes International Petroleum Eng.
Itag Celle
Kurt Kohorn, Ltd.
Lanzagorta/FMCA
Mapegaz
Offshore Drilling Supplies, Ltd.
Okgt
Phoceenne De Metallurgie
Saut-Du-Tarn
Sarck Audco Valves
T. I. Group
Trouvay & Cauvin

VALVES - Ball Check:

Breda Fucine
Brisco Engineering, Ltd.
Kurt Kohorn, Ltd.
Lanzagorta/FMCA
Mapegaz
Saut-Du-Tarn

VALVES - Block & Bleed:

Breda Fucine
Kurt Kohorn, Ltd.
Lanzagorta/FIP
Mapegaz
Saut-Du-Tarn
Serck Audco Valves

VALVES - Bottom Hole Chemical:

Kurt Kohorn, Ltd.
Serck Audco Valves

VALVES - Brass:

Kurt Kohorn, Ltd.
Serck Audco Valves
T. I. Group

VALVES - Butterfly:

CBV
Equipement Petrolier
GEC-Elliott Control Valves, Ltd.
Kurt Kohorn, Ltd.
Lanzagorta/FMCA
Lanzagorta/Magnaval
Mento A/S

VALVES - Butterfly (contd.)

Niigata Engineering Co.
Offshore Drilling Supplies, Ltd.
Rognon S.A.
Rotator Norway
Serck Audco Valves
T. I. Group
Trouvay & Cauvin
Vitro, S.A.

VALVES - By-Pass:

Kurt Kohorn, Ltd.
Lanzagorta/FMCA
Serck Audco Valves
T. I. Group

VALVES - Cage:

Kurt Kohorn, Ltd.
Mapegaz

VALVES - Casing Annulus:

Hubner Gray GmbH
Kurt Kohorn, Ltd.

VALVES - Casing Fill-up:

Kurt Kohorn, Ltd.

VALVES - Casing Float:

Kurt Kohorn, Ltd.

VALVES - Check:

Breda Fucine
Brisco Engineering, Ltd.
Costruzioni-Hydro Pheumatic
Kurt Kohorn, Ltd.
Lanzagorta/FMCA
Lanzagorta/Magnaval
Lanzagorta/Panaval
Mapegas
Offshore Drilling Supplies, Ltd.
T. I. Group
Trouvay & Cauvin

VALVES - Check, Wafer:

Brisco Engineering, Ltd.
Kurt Kohorn, Ltd.

VALVES - Chemical Injector:

Carlo, S.A

VALVES - Choke:

Hubner Gray GmbH
Lanzagorta International

VALVES - Christman Tree:

Breda Fucine
CBV
Hubner Gray GmbH
Kurt Kohorn, Ltd.
Lanzagorta/FIP
Malbranque
Mapegaz
Okgt

VALVES - Circulating:

Kurt Kohorn, Ltd.
Okgt
Serck Audco Valves

VALVES - Control:

Brastech Industrials
Costruzioni Hydro-Pneumatic
GEC-Elliott Control Valves, Ltd.
Kurt Kohorn, Ltd.
Mapegaz
Matra Offshore
Ohemco
Rotator Norway
Serck Audco Valves

VALVES - Cryogenic:

Mapegaz

VALVES - Diaphragm Operated:

Afeco, Inc.
GEC-Elliott Control Valves, Ltd.
Kurt Kohorn, Ltd.
Phoceenne De Metallurgie
Trouvay & Cauvin

VALVES - Disc:

Kurt Kohorn, Ltd.
Lanzagorta/FMCA
T. I. Group

VALVES - Discharge:

Bronzavia
Kurt Kohorn, Ltd.
Matra Offshore
Serck Audco Valves

VALVES - Drilling:

Breda Fucine
Griffith Oil Tool, Ltd.
Kurt Kohorn, Ltd.
Offshore Drilling Supplies, Ltd.
Omsco Ind., Inc.

VALVES - Dual:

Breda Fucine
Kurt Kohorn, Ltd.
Lanzagorta/FIP

VALVES - Dump:

Dreco, Ltd.
Costruzioni Hydro-Pneumatic
Kurt Kohorn, Ltd.

VALVES - Equalizing:

Kurt Kohorn, Ltd.

VALVES - Fail Safe:

Breda Fucine
Costruzioni Hydro-Pneumatic
Kurt Kohorn, Ltd.
Mapegaz
Saut-Du-Tarn
Serck Audco Valves

VALVES - Fail Safe, Subsea:

Kurt Kohorn, Ltd.
Mapegaz
Saut-Du-Tarn

VALVES - Float:

Breda Fucine
Kurt Kohorn, Ltd.
Serck Audco Valves

VALVES - Flow Control:

CBV
Equipement Petrolier

VALVES - Flow Control (contd.)

GEC-Elliott Control Valves, Ltd.
Kurt Kohorn, Ltd.
Lanzagorta/FIP
Lanzagorta/FMCA
Niigata Engineering Co.
Vitro, S.A.

VALVES - Formation Testing:

Kurt Kohorn, Ltd.

VALVES - Four Way:

Mapegaz
Serck Audco Valves

VALVES - Fracturing:

Brastech Industrials
Camlow
Kurt Kohorn, Ltd.

VALVES - Gas Lift:

Afeco, Inc.
Bompet de Venuzuela
Carlo, S.A.
Impamex, S.A.
Saut-Du-Tarn

VALVES - Gas Lift Packoff Assembly:

Afeco, Inc.
Teledyne Merla

VALVES - Gas Lift, Pumpdown:

Afeco, Inc.

VALVES - Gate:

Adamson & Hatchett
Breda Fucine
Brisco Engineering, Ltd.
Goes International Petroleum Services Pte., Ltd.
Kurt Kohorn, Ltd.
Lanzagorta/FIP
Lanzagorta/FMCA
Lanzagorta/Magnaval
Lanzagorta/Panaval
Malbranque
Offshore Drilling Supplies, Ltd.
Phoceenne De Metallurgie
A/S Raufoss, Ltd.

VALVES - Gate (contd.)

Sereg/Schlumberger/Malbranque
T. I. Group
Trouvay & Cauvin
Unitor Ships Service AS

VALVES - Gauge:

Brisco Engineering, Ltd.
Kurt Kohorn, Ltd.
Lanzagorta/FMCA
Serck Audco Valves

VALVES - Globe:

Breda Fucine
Brisco Engineering, Ltd.
Kurt Kohorn, Ltd.
Lanzagorta/FMCA
Lanzagorta/Magnaval
Lanzagorta/Panaval
Mapegaz
Phoceenne De Metallurgie
Rotator Norway
Sereg/Schlumberger/Malbranque
T. I. Group
Trouvay & Cauvin

VALVES - High Pressure:

Adamson & Hatchett
Breda Fucine
Brisco Engineering, Ltd.
Bronzavia
Costruzioni Hydro-Pneumatic
GEC-Elliott Control Valves, Ltd.
Kurt Kohorn, Ltd.
Lanzagorta/FIP
Lanzagorta/FMCA
Mapegaz
Offshore Drilling Supplies, Ltd.
Okgt
R O P
Saut-Du-Tarn
Serck Audco Valves
Sereg/Schlumberger/Malbranque

VALVES - High Temperature:

Breda Fucine
Brisco Engineering, Ltd.
Kurt Kohorn, Ltd.
Lanzagorta/FIP
Lanzagorta/FMCA
Novelles Applications Technologiques
Okgt

VALVES - High Temperature (contd.)

Saut-Du-Tarn
Serck Audco Valves
Sereg/Schlumberger/Malbranque

VALVES - Hydraulic Retrievable:

Itag Celle
Hydraudyne B.V.
Kurt Kohorn, Ltd.

VALVES - Hydraulically Operated:

Adamson & Hatchett
Breda Fucine
Brisco Engineering, Ltd.
Bronzavia
Dowty Offshore, Ltd.
Hydraudyne B.V.
Kurt Kohorn, Ltd.
Mapegaz
Matra Offshore
Rotator Norway
Saut-Du-Tarn
Serck Audco Valves

VALVES - Insert:

Kurt Kohorn, Ltd.
Stabylia

VALVES - Kelly, Joint Safety:

Griffith Oil Tool, Ltd.
Itag
Kurt Kohorn, Ltd.

VALVES - LPG:

Kurt Kohorn, Ltd.
Lanzagorta/FIP
Novelles Applications Technologiques
Saut-Du-Tarn
Serck Audco Valves

VALVES - Line Blind:

Kurt Kohorn, Ltd.

VALVES - Liquid Sampler:

Barber Industries, Ltd.
Kurt Kohorn, Ltd.

VALVES - Manifold:

Breda Fucine
Bronzavia
Kurt Kohorn, Ltd.
Lanzagorta/FIP
Offshore Drilling Supplies, Ltd.
Saut-Du-Tarn
Serck Audco Valves
Unitor Ships Service AS

VALVES - Mixing Fluid:

Kurt Kohorn, Ltd.

VALVES - Motor:

Breda Fucine
Costruzioni Hydro-Pneumatic
Kurt Kohorn, Ltd.

VALVES - Mud:

Barber Industries, Ltd.
Dreco, Ltd.
Kurt Kohorn, Ltd.
Offshore Drilling Supplies, Ltd.
Serck Audco Valves

VALVES - Mud Relief:

Kurt Kohorn, Ltd.

VALVES - Mud Saver:

Griffith Oil Tool, Ltd.

VALVES - Mud Suction:

Dreco, Ltd.

VALVES - Mud Throttling:

Kurt Kohorn, Ltd.

VALVES - Multiport:

Breda Fucine
Brisco Engineering
Kurt Kohorn, Ltd.
Lanzagorta International
Serck Audco Valves

VALVES - Needle:

Breda Fucine
Brisco Engineering, Ltd.

VALVES - Needle (contd.)

Kurt Kohorn, Ltd.
Lanzagorta/FMCA
Offshore Drilling Supplies, Ltd.
T. I. Group

VALVES - Non-Lubricated Plug:

Breda Fucine
Kurt Kohorn, Ltd.
Lanzagorta International, Inc.
Mapegaz
Serck Audco Valves
T. I. Group

VALVES - Orifice:

Breda Fucine
Kurt Kohorn, Ltd.

VALVES - Pig Injector:

Brisco Engineering, Ltd.
Itag Celle
Kurt Kohorn, Ltd.
Serck Audco Valves

VALVES - Piston Check:

Brisco Engineering, Ltd.
Bronzavia
Kurt Kohorn, Ltd.
Lanzagorta/FMCA

VALVES - Plug:

Breda Fucine
Goes International Petroleum Services
  Pte., Ltd.
Industrialexportimport
Kurt Kohorn, Ltd.
Lanzagorta/Inval
Mapegaz
Offshore Drilling Supplies, Ltd.
Phoceenne De Metallurgie
Serck Audco Valves
T. I. Group
Trouvay & Cauvin

VALVES - Pneumatically Operated:

Afeco, Inc.
Breda Fucine
Brisco Engineering, Ltd.
Costruzioni Hydro-Pneumatic
Itag Celle

VALVES - Pneumatically Operated (contd.)

Mapegaz
Saut-Du-Tarn
Serck Audco Valves
Sigma Chemie, Ltd.

VALVES - Pressure Control:

Barber Industries, Ltd.
Brisco Engineering, Ltd.
Bronzavia
Costruzioni Hydro-Pneumatic
GEC-Elliott Control Valves, Ltd.
Kurt Kohorn
Lanzagorta International, Inc.
Matra Offshore
Serck Augco Valves

VALVES - Production:

Wenlen S.A.

VALVES - Pump:

Industrialexportimport
Kurt Kohorn, Ltd.
Mapegaz
Offshore Drilling Supplies, Ltd.
Serck Audco Valves
Vereinigte Edelstahlwerke AG

VALVES - Regulator:

Afeco, Inc.

VALVES - Relief:

Brisco Engineering, Ltd.
Costruzioni Hydro-Pneumatic
GEC-Elliott Control Valves, Ltd.
Hydraudyne BV Holland
Kurt Kohorn, Ltd.
Lanzagorta/FMCA
Mapegaz
T. I. Group

VALVES - Safety:

AVA International, Inc.
Costruzioni Hydro-Pneumatic
Flopetrol
GEC-Elliott Control Valves, Ltd.
Goldhan Olfeddaurustungen
Kurt Kohorn, Ltd.
Lanzagorta/FMCA
Phoceenne De Metallurgie
Saut-Du-Tarn
Site Oil Tools, Ltd.

VALVES - Self-Closing:

Kurt Kohorn, Ltd.
Mapegaz

VALVES - Self-Sealing:

Kurt Kohorn, Ltd.
Saut-Du-Tarn

VALVES - Shuttle:

Brisco Engineering, Ltd.
Kurt Kohorn, Ltd.

VALVES - Sphere Launching & Receiving:

Itag Celle
Mapegaz
Serck Audco Valves

VALVES - Standpipe:

Okgt
Serck Audco Valves

VALVES - Steam:

Breda Fucine
GEC-Elliott Control Valves, Ltd.
Kurt Kohorn, Ltd.
Lanzagorta/FMCA
Lanzagorta/Magnaval
Lanzagorta/Panaval
Okgt
T. I. Group

VALVES - Subsea:

Kurt Kohorn, Ltd.
Mapegaz
Saut-Du-Tarn

VALVES - Swing Check:

Brisco Engineering, Ltd.
Kurt Kohorn, Ltd.
Lanzagorta/FMCA
Lanzagorta/Magnaval
Lanzagorta/Panaval
Mapegaz

VALVES - Thermal Steam:

Breda Fucine

VALVES - Thermal System:

Kurt Kohorn, Ltd.

VALVES - Three Way:

Brisco Engineering, Ltd.
Itag Celle
Kurt Kohorn, Ltd.
Lanzagorta/FMCA
Mapegaz
Saut-Du-Tarn
Serck Audco Valves

VALVES - Timing:

Kurt Kohorn, Ltd.

VALVES - Triple String:

Kurt Kohorn, Ltd.
Lanzagorta/FIP

VALVES - Tubing:

Griffith Oil Tool, Ltd.
Kurt Kohorn, Ltd.
Sandvid AB

VALVES - Tbg. Safety, Pumpdown:

Kurt Kohorn, Ltd.

VALVES - Vacuum:

Kurt Kohorn, Ltd.
Serck Audco Valves

VALVES - Venturi Type:

Breda Fucine
Kurt Kohorn, Ltd.
Lanzagorta/Inval
Mapegaz
Saut-Du-Tarn
Serck Audco Valves
Sereg/Schlumberger/Malbranque

VALVES - Waterflood:

Carlo, S.A

VALVES - Wireline:

Kurt Kohorn, Ltd.

VAPORIZERS - Propane:

C. Goldhan
Novelles Applications Technologiques

VEHICLES - Underwater:

Comex Industries
Comex Seal
Ethyd

VESSELS - Pressure:

Creusot-Loire/Pressure Vessels Div.
Motherwell Bridge Group
Novelles Applications Technologiques
Otek Petroleum Products
Porta-Test Mfg., Ltd.
Rotator Norway

VIBRATORS - Hydraulic:

Hydraudyne B.V.

VISCOSIMETERS:

Anchor Drilling Fluids A/S
R O P
Samega

VISCOMETERS - Recording:

Anchor Drilling Fluids AS

VISES - Hydraulic:

Hydraudyne B.V.

VISES - Wire Rope:

United Ropeworks

WALKWAYS - Steel:

Bharat Heavy Electricals, Ltd.
Norseman Shelter, Ltd.
T. I. Group

WALKWAYS - Aluminum:

Verhoef Aluminum Scheepsbouwindustrie

WASHERS - High Pressure:

Unitor Ships Service AS

WASHPIPE - Swivel:

Arbarthorpe Oilfield Service, Ltd.
Equipetrol SA
Industrialexportimport

WELDING - Subsea:

Lockheed Petroleum Services, Ltd.
Nippon Kokan K.K.
Unitor Ships Service

WELL CEMENT:

Blue Circle Industries, Ltd.
Canada Cement Lafarge Limited
Cementos Apasco, S.A.
Cementos Hercules
Cimento Aratu S.A.
Compagnie des Ciments Belges
Companhia De Cimento Protland Alvorada
Dyckerhoff Zementwerke AG
Jalaprathan Cement Co., Ltd.
La Cemento Nacional C.E.M.
Lafarge
Nihon Cement Co., Ltd.
A/S Norcem
Pan Malaysia Cement Works (Singapore) Pte., Ltd.
Societe Des Ciments Libanais
Sumitomo Cement Co., Ltd.
Tehran Cement Co., Ltd.
Trinidad Cement, Ltd.
Ube Industries, Ltd.

WELLHEAD - Equipment:

Barber Industries
B.D. Specials, Ltd.
Bonney Forge International, Ltd.
Breda Fucine S.p.A.
John Brereton Flange Div., Doncasters Moorside Limited
Bruck GmbH Rofrverbindungen
Burton, Delingpole & Company, Ltd.
"Canada" Tiefbohrgerate-und Maschinenfabrik
CBV Industria Mecanica, S.A.
Celler Maschinenfabrik Gebruder Schafer
Corrugated Packing & Sheet Metal Co., Ltd.
Danco Talleres Metalurgicos S.R.L.
Energoinvest
Ets. WILRAY S.P.R.L.
FIP, S.A. de C.V.
Flextallic Gaskets, Lrd.
Flotec Group, Ltd.
Forjas de Colombia S.A.
Futawa Flange Works Co., Ltd.
Galaxy Machine & Mfg. Co., Ltd.

WELLHEAD - Equipment (contd.)

Galaxy Oilfield Service, Ltd.
Gilardina S.p.A.-Division R I P
Hirata Valve Industry Co., Ltd.
Hofland Pakking B.V.
Hubner Vamag AG & Co. KG
John Valves Division, Wornald Int'l.
K.K. Itabashi Kikai Seisakusho
Kanda Sangyo Co., Ltd.
Kampchen & Co., GmbH
Kent Machine & Mfg., Ltd.
LANZA S.p.A.
Linvic Engineering, Ltd.
Mannesmann Denmag Meer
Mardale Engineering Co., Ltd.
James MdLarty & Son
Metal Forgings Private Limited
Moorside Machining Co., Ltd.
Munro & Miller Fittings, Ltd.
Nicola Galperti & Figlio
ORION Officine Meccaniche Specializzate
Perolo S.A.
Rector-Gray, Ltd.
Robinson Piping Productd, Ltd.
Serck Audco Valves
Sereg/Schlumberger/Malbranque
Societe Pyreneenne de Macanique
Stream-Flo Industries, Ltd.
Weldco, Ltd.
Welding Units (UK), Ltd.
Willis Oil Tool Canada, Ltd.
Woodhouse & Rixson Flanges Limited
Yahata Machine Manufacturing, Inc.

WELLHEADS - Geothermal:

Breda Fucine
CBV Industria Mecanica
Canada Works
Mapegaz
Wenlen S.A.

WINCHES - Air Operated:

Atlas Copco AB
Ceria
Industrialexportimport
Unitor Ships Service
Wharton Engineers

WINCHES - Anchor:

A.S. Bergens Makaniske Verk
Brissonneau & Lotz Marine
Ceria

WINCHES - Anchor (contd.)

Clarke Chapman, Ltd.
Hydraulik Brattvaag
Pusnes Makaniske Verksted
Wharton Engineers

WINCHES - Bailing:

Ceria

WINCHES - Drum:

A.S. Bergens Mekaniske Verk
Ceria
Clarke Chapman, Ltd.
GEC Mechanical Handling
Skagit Corp.
Wharton Engineers

WINCHES - Hydraulic:

ASEP BV Holland
A. S. Bergens Mekaniske Verk
Brissonneau & Lotz Marine
Ceria
Clarke Chapman, Ltd.
Dowty Offshore, Ltd.
Ethyd
Flopetrol
Freidrich Leutert GmbH & Co.
GEC Mechanical Handling
Hydraudyne BV
Hydraulik Brattvaag
Pusnes Mekaniske Verksted
Western Hydraulic
Wharton Engineers

WINCHES - Moorings:

A. S. Bergens Mekaniske Verk
Brissonneau & Lotz Marine
Ceria
Clarke Chapman, Ltd.
GEC Mechanical Handling
Skagit Corp.
Wharton Engineers

WINCHES - Self Propelled:

Flopetrol
Salzgitter Maschinen
Wharton Engineers

WINCHES - Skid:

ASEP BV Holland
Ceria
Clarke Chapman, Ltd.
Friedrich Leutert GmbH & Co.
Salzgitter Maschinen
Wharton Engineers

WINCHES - Subsea:

Ceria
Wharton Engineers

WINCHES - Testing:

Pusnes Makaniske Verksted
Wharton Engineers

WINCHES - Tractor, Truck:

ASEP BV Holland
Ceria
Itag
Wharton Engineers

WINCHES - Trailer:

Wharton Engineers

WINCHES - Utility:

Clarke Chapman, Ltd.
Wharton Engineers

WINCHES - Waterfall Type:

A. S. Bergens Mekaniske Verk
Clarke Chapman, Ltd.
Hydraulik Brattvaag
Skagit Corp.
Wharton Engineers

WINCHES - Wireline:

A.S. Bergens Mekaniske Verk
ASEP BV Holland
Atlas Copco
Ceria
Diamant Boart S.A.
Flopetrol
Friedrich Leutert GmbH & Co.
Pusnes Mekaniske Verksted
Western Hydraulic
Wharton Engineers

WINDBREAKS - Canvas:

Hendrik Veder
Norseman Shelters, Ltd.

WINDLASSE:

A. S. Bergens Mekaniske Verk
Brissonneau & Lotz Marine
Ceria
Clark Chapman, Ltd.
Skagit Corp.

WIPERS - Automatic Line:

Sigma Chemie, Ltd.

WIPERS - Key Seat:

Lion Oil Tool
Sigma Chemie, Ltd.

WIPERS - Pipe:

Arbarthorpe Oilfield Services, Ltd.
Goes International Petroleum Service Pte., Ltd.
Industrialexportimport
Mento A/S
Sigma Chemie, Ltd.
Stabylia

WIPERS - Rod & Tubing:

Sigma Chemie, Ltd.

WIPERS - Well Bore:

Sigma Chemie, Ltd.

WIPERS - Wireline:

Flopetrol
Sigma Chemie, Ltd.

WIRE - Electrical:

Goes International Petroleum Service Pte., Ltd.
Northern Rig Lites
Societa Cavi Pirelli

WIRE - Stabilized:

G K N Group

WIRELINE MEASURING:

ASEP BV Holland

WIRELINE MEASURING - (contd.)

Creusot-Loire/Metallurgie
Pusnes Mekaniske Verksted
Tesel Services, Ltd.

WIRELINE TOOLS:

Carlo, S.A.
Seaco
Superior Oil Service

WIRE ROPE:

Acciaierie e Ferriere Lombarde Falck
Aceros Nacionales S.A.
Anglo-Continental Ropes S.A.
Trefil-Arbed, Vereinigte Drahtwerke,
  Arbed-Felton & Guilleaume S.A.
Australian Wire Industries Pty., Ltd.
Berjaya Kawat Berhad
Bertram, K.G., J.
Bombay Wire Ropes, Ltd.
British Ropes, Ltd.
Bruntons (Musselburgh), Ltd., Wire Mills
Cableworks Brugg, Ltd.
Camesa, Sociedad Anonima
C.I.M.A.F.
Crawhall & Sons, Ltd.
Dawson & Usher, Ltd.
Den Haan Staalkabelfabriek N.V.
Deriver, S.p.A.
Drahtseilerie Gustav Kock GmbH
Drahtseilwerke Saar GmbH
Elkem-Spigerverket A/S, Stal Og Tau
Empresa Colombiana de Cables S.A.
Est, 'Metalurgicos Santa Rosa, S.A.
Fatzer AG Romanshorn
Felix Simon S.A.C.I.F.A.
Felten & Guilleaume AG
Firth Cleveland Ropes, Ltd.
Fort William Co., Ltd.
Frew Brothers & Company, Ltd.
Georg Heckel GmbH
Guiseppe & Fratello Redaelli Soc. p. Az.
Glover Borthers (Mossley), Ltd.
Greening Donald, Ltd.
Gunnebo Bruks Aktiebolag
Haggie Steel Ropes, Limited
Hall's Barton Ropery, Co., Ltd.
Heinr. Puth Kom. Ges.
Igeta Wire Rope Co., Ltd.
J.K. Steel & Industries, Ltd.
Kokoku Steel Wire, Ltd.
Korea Iron & Steel Works, Ltd.

WIRE ROPE - (contd.)

Laminoirs Trefileries Cableries de Lens
Latch & Batchelor, Ltd.
Le Lis, Ltd.
Lesjofors Aktiebolag
Manoel Rodrigues D'Oliveira SA & Filhos, Lda.
Maroni Sebastiano S.p.A., Corderie Trafilerie
Martin, Black & Co. (Wire Ropes), Ltd.
Martin, Black Wire Ropes of Canada, Ltd.
Mohatta & Heckel, Ltd.
Nippon Steel Wire Rope Co., Ltd.
A/S Norsk Staaltaugfabrik
Productos de Acero S.A.
S.A. Des Hauts Fourneaux De La Chiers
Schweizerische Seil-Industrie AG
Scottish Wire Rope Co., Ltd.
Seilindustrie Ernst Seifuss
John Shaw, Limited
Shinko Wire Co., Ltd.
Sociedad Franco Espanola de Alambres, Cables
  y Transportes Aceros
Societe Des Trefileries De Chatilon - Gorcy
South India Wire Ropes, Limited
St. Egydyer Eisen-Und Stahl Industrie-
  Gesellschaft
Steel Rope Industries (N.Z.), Ltd.
Teikoku Sangyo Co., Ltd.
Teufelberger, K.
Thyssen Westfaelische Union AG
Tokyo Rope Mfg. Co., Ltd.
Trefilerie & Cablerie J. Wurth & Cie
Trenzas y Cables de Acero S.A.
United Ropeworks
United Wire Ropes, Ltd.
Usha Wire Ropes (Export Division)
Usines Gonzales Cock S.A.
Vereinigte Drahtseilwerke GmbH
Wireco Venezolana, C.A.
Wire Rope Industries, Ltd.
Wire Rope Industries, Ltd.
Wire Rope Works Messilot, Ltd.
Gustav Wolf
Wrights Canadian Ropes, Ltd.

WORKSHOP - Service:

Creusot-Loire Energie Developements
Van Der Horst Asia Pte., Ltd.

WRENCHES - Bean:

Canada

WRENCHES - Impact:

Atlas Copco AB
Unitor Ships Service

WRENCHES - Pipe:

Unitor Ships Service AS

WRENCHES - Sucker Rod:

Industrialexportimport

WRENCHES - Torque:

Arbarthorpe Oilfield Services, Ltd.

Non-U.S. Sources of Petroleum Equipment By Country of Origin

ARGENTINA

ACINDAR, Industria Argentina de Aceros S.A.
AVAN S.A.I.C.
Bolland & Cia. S.A.
Camlow
Carlo, S.A.
Cometarsa S.A.I.C.
Dalmine Siderca S.A.I.C.
Danco Talleres
Diamont Bort of Argentina
Est. Mecanicos Jone S.A.I. y C.
Est. Metalurgicos Santa Rosa S.A.
FAVRA, S.A.I.C.
Felix Simon S.A.C.I.F.A.
Industrias Pirelli, S.A.I. y C.
Merex Argentine S.A.
Metalurgica Bellucci S.A.I.C.F.I.A.
Petromecanica S.A.I. y C.
Rusco Hnos S.A.
Siam Di Tella Ltda.
Tool Research
Wenlen, S.A.
Win-Lyn

AUSTRALIA

Australian Wire Industries Pty., Ltd.
Deer Park Engineering Pty. Ltd.
John Valves Division Wornald International
James McLarty & Son
B. C. Richards & Co. Pty. Ltd.
Serck Audco Pty., Ltd.
Tubemakers of Australia Ltd.

AUSTRIA

Canadawerk
Felten & Guilleaume AG
Huber-Gray Machinen-und AG M.B.H.
Hubner Vamag AG & Co. K.G.
Semperit Aktiengesellschaft
St. Egydyer Eisen-und Stahl Industrie-Gesellschaft
Teufelberger, K.
Tiefbahrgerate-und Muschinenfubrik
Vereinigte Edelstahlwerke AG
VOEST-ALPINE AG
Waagner-Biro Aktiengesellschaft

BAHAMAS

Bruce Internation

BELGIUM

ACEC (Ateliers de Constructions Electriques de Charlerio)
Anglo-Continental Ropes S.A.
Compagnie des Ciments Belges
Diamant Boart S.A.
LeLis Ltd.
Usines a Tubes de la Meuse
Usines Gonzales Cock S.A.

BRAZIL

Brastech Industrials
CBV Industrial
CBV Industria Mecanica S.A.
CBV Equipetrol
C.I.M.A.F.
Companhia Di Gmento Portland Alvorade
Confab Industrial S.A.
Danco Tolleres Metalurgicos S.R.I.
Equipetrol S.A.
IBRAVE - Industrias Brasile iras de Valvulas e Equipmentos Ltda.
IMS - Industria Metalurgica de Salvador S.A.
Mannesmann S/A
Persico Pizzamiglio S.A.

CANADA

The Algoma Steel Corp., Ltd.
Argo Sales, Ltd.
Barber Industries
Blow Out Products, Ltd.
Borsig Hartmann Valve Ltd.
Canada Cement Lafarge, Ltd.
Canadian Crown Steel Tank Co., Ltd.
Canvil, Ltd.
Clemmer Industries Ltd.
Cougar Tool Division, OPI Ltd.
Dominion Bridge Company Limited
Dreco, Ltd.
Galaxy Machine & Mfg. Co. Ltd.
Galaxy Oilfield Service Ltd.
Greening Donald Ltd.
Griffith Oil Tool Ltd.
Hamilton Gear & Machine Co.
Interprovincial Steel & Pipe Corp., Ltd.
Kent Machine & Mfg. Ltd.
Knoll Rig & Equipment Manufacturing Co., Ltd.
LeGrand Industries, Inc.
Martin, Black Wire Ropes of Canada, Ltd.
Northern Rig Lites Ltd.
Phillips Driscopipe, Inc.
Phillips Extruded Products, Ltd.

CANADA - (Continued)

Quinn's Oilfield Supply Ltd.
R & D Machine Ltd.
Recon Manufacturing Co.
Rector-Gray Ltd.
Reinhold Industries Ltd.
Renn Industries, Inc.
Robinson Piping Products Ltd.
Stelco Inc.
T.P.S. Industries Ltd.
Tri-Service Machine Ltd.
Universal Industries Ltd.
Wire Rope Industries, Ltd.
Wrights Canadian Ropes Ltd.

CHILE

Productos de Acero S.A. (PRODINA)

COLOMBIA

Empresa Colombiana de Cables S.A.

CZECHOSLAVAKIA

Nova Hut Klementa Gottwalda, Narodni Podnik
Vitkovice Steel and Engineering Works of Klement Gottwald, Nat. Corp.

DENMARK

Brdr. Christensen s Haner A/S
Roulands Fabriker, Ltd.

FINLAND

Rauma Pepola Oy

FRANCE

ACB (Ateliers et Chantiers de Bretagne)
Alsthom Atlantique, Division Moteurs
Alsthom Atlantique, Neyrfor
BSL (Bignier Schmid-Laurent)
Basset-Bretagne-Loire
Brissonneau & Lotz Marine
Bronzavia
CGE Group
CIT Alcatel
Ceca S.A.
Ceria
Colmant Cuvelier
Coflexip
Comex Group
Creusot-Loire Group
EMH (Equipements Mecaniques et Hydrauliques)
Engrenages et Reducteurs
Equipment Petrolier
Ethyd
Flopetrol
Geomecanique
Graffenstaden Division
Hercules France S.A.
Jeumont-Schneider
Kleber-Colombes
Lafarge
Laminoirs Trefileries Cableries de Lens
Malbranque Serseg Valve Pressure Vessel
Mapegaz S.A.
Marep Division
Matra Offshore
Mecafrance S.A.
Merip
Micro-Mecanique Pyreneene
N.A.T. (Novelles Applications Technologiques)
Perolo S.A.
Petromeca
ROP s.a.
S.A. Des Hauts Fourneaux De La Chiers
SMF Creusot-Loire
SMF International
Sacm
Samega
Saut Du Tarn
Sedis
Sereg Schlumberger
Societe Des Trefileries De Chatilon - Gorcy
Societe Nouvelle du Saut du Tarn
Societe Pyreneenne de Mecanique
Sofresid
Stabylia
Thevignot S.A., Ets
Thomson-CSF AVS
Thomson-CSF Dasm
Trefilerie & Cablerie J. Wurth & Cie.

FRANCE - (Continued)

U.M.D. International
Union Industrielle et D'Entreprise
Usinor
Valexy Vallourec
VALTI
Vannes Darling France Sarl

W. GERMANY

Amsted-Siemag Kette GmbH
Arbed-Felten & Guilleaume S.A.
Argus Gesellschaft M.B.H.
Arntz-Optibelt-KG
Bergrohr GMBH
J. Bertram, K.G.
Blohm & Voss AG
Borsig GmbH
Bruck GmbH Rohrverbindungen
Celle Maschinafabriken
Celler Maschinenfabrik Gebruder Schafer
Deutsche Audco GmbH
Dipl.-Ing. Werner Hartmann KG
Drahtseilerei Gustav Kocks GmbH
Drahtseilwerke Saar G.m.b.H.
Dyckerhoff Zementwerke A.G.
Eisenwerk - Gesellschaft Macimillanshutte mbH
Eschweiler Bergwerks-Verein AG
Estel Rohr AG
GHH Sterkrade AG
C. Goldhan-Olfeldausrustungen G.M.B.H.
Georg Heckel G.m.b.H.
Heinr. Puth Kom. Ges.
Hermann von Rautenkranz, Internationale Tiefbohr GmbH & Co. KG, ITAG
Hoesch Roehrenwerke AG
Hoechst AG
Itag, celle
Kempchen & Co., G.m.b.H.
Klippon Electricals Ltd.
Kloeckner-Humboldt-Deutz AG
Kolsch-Folzer-Werke AG
Leotert
Friedrich Luetert GmbH & Co.
Mannesmann Demag Meer
Mannesmannrohren-Werke AG
Moller-Werke GMBH
Paderwerk Gebr. Benteler
Peter-BTR, Gummiwerke AG
Rohrenwerke Bous/Saar GmbH
Sachtleben Chemie GmbH
Salzgitter Maschinen Und Anlagen AG
Seilindustrie Ernst Deifuss
Thyssen Wetfaelische Union AG
VAG-Armaturen GmbH

W. GERMANY - (Continued)

Vereinigte Drahtseilwerke GmbH
Weidmuller K.G.
Wilh. Bitter, Armaturenfabrik
Alfred Wirth & Company KG
Wirth Maschinen-Und Bohrgerate Fabrik GmbH
Gustav Wolf
Zimmerman & Jansen G.m.b.H.

GREECE

Athens Pipe Works S.A.
Corinth Pipeworks

HOLLAND

Chemische Fabriek Servo B.V.
De Vries Robbe & Co., N.V.
Den Haan Staalkabelfabriek N.V.
Hendrik Veder B.B.
Hofland Pakking b.v.
Holec
RSV
Rademakers Aandrijvingen B.V.
Scholten
W.A. Scholten's Chemische Fabrieken b.v.
Thomassen Holland B.V.
United Ropeworks

HUNGARY

Csepel Works

INDIA

Bharat Heavy Electricals Ltd.
Bombay Wire Ropes Ltd.
Dewrance MacNeil & Company, Ltd.
The Fort William C., Ltd.
The Indian Tube Co., Ltd.
J. K. Steel & Industries, Ltd.
Laxmi Udyog
Metal Forgings Private Limited
Mohatta & Heckel Ltd.
South India Wire Ropes Limited
United Wire Ropes, Ltd.
Usha Wire Ropes

ITALY

Acciaierie e Ferriere Lombarde FALCK S.p.A.
Acciaierie Tubificio Arvedo
Alessio Tubi S.p.A.
Breda Fucine S.p.A.
Costruzioni Hydro-Pneumatic
Dalmine S.p.A.
Deriver, S.p.A.
Edemsarda SpA
F.I.T. Ferrotubi Corbetta S.p.A.
Galli & Cassina S.R.L.
Gilardina
Grondona, S.p.A.
Grove Italia SpA
Guiseppe & Fratello Redailli Soc. p. Az.
Industrie Pirelli S.p.A.
LANZA S.p.A.
Mario Maraldi S.p.A.
S.P.A. James Massarenti
Maroni Sebastiano S.p.A., Corderie Trafilerie
Metalghisi
Nicola Galperti & Figlio
Nuovo Pignone, SpA
ORION Officine Meccaniche Specializzate
PERAR S.p.A.
Petrolvalves S.r.L.
RAIMONDO S.p.A.
S.E.T.A., S.p.A., Societa Europea Tubifici e Acciaierie S.p.A.
Sella, S.p.A.
Tormene s.n.c.
TFW Techniflow s.p.a.
Tubificio Dalmine Italsider S.p.A.
Valvosider s.r.l.

ISRAEL

Middle East Tube Co.
Wire Rope Works Messilot, Ltd.

IRAN

Tehran Cement Co., Ltd.

JAPAN

Arai Iron Works Co., Ltd.
Awaji Sangyo K.K.
Daido Seiko
Daido Steel Co., Ltd.
Dai-Ichi Sokuhan Works, Ltd.

JAPAN - (Continued)

Daisho Valve Industry Co., Ltd.
Dawaguchi Metal
Fuji Tekko K.K.
Fukuda Kogyo Co. Ltd.
Futawa Flange Works Co. Ltd.
Hamanaka Chain Mfg. Co., Ltd.
Haruta Valve Mfg. Co. Ltd.
Hirata Valve Industry, Ltd.
Hisaka Works, Ltd.
Hitachi Metals, Ltd.
IKS
Igeta Wire Rope Co., Ltd.
Ishida Vave Mfg. Co., Ltd.
Itoh
Izumi Seisakusho Co., Ltd.
Japan Mechanical Chain Mfg. Co., Ltd.
The Japan Steel Works Ltd.
K.K. Itabashi Kikai Seisakusho
Kanda Sangyo Co., Ltd.
Kashiwara Machine Manufacturing Co., Ltd.
Kawaguchi Kinsoki
Kawasaki Steel Corp.
Kimura Yasaku Co., Ltd.
Kitamura Valve Mfg. Co. Ltd.
Kinkakikai Co., Ltd.
Kitaziwa Valve Company Ltd.
Kobayashigen Sangyo Co. Ltd.
Kobe Steel, Ltd.
Koku Steel Wire, Ltd.
Kokubo Tekksho
Kubota, Ltd.
Kuroda Precision Industries, Ltd.
Maruichi Steel Tube Ltd.
Mitsubishi
Mitsubishi Heavy Industries
Mitsubishi Steel Mfg. Co. Ltd.
Mitsuboshi Belting Ltd.
Mitsumoto Valve Mfg. Co., Ltd.
Nakamura Metallic Industry Co., Ltd.
Nihon Cement Co., Ltd.
Nihon Kosg Industry Co., Ltd.
Niigata Engineering Company
Nippon Ball Valve Co. Ltd.
Nippon Chain & Anchor Co., Ltd.
Nippon Chuzo K.K.
Nippon Daiyo Valve Co., Ltd.
Nippon Kokan Kabushiki Kaisha
Nippon Kokan Tsugite Kabushiki Kaisha
Nippon Steel Corp.
Nippon Steel Wire Rope Co., Ltd.
Nippon Valqua Industries, Ltd.
Nishimura Koki Co., Ltd.
O.N. Industries, Ltd.
OSG Manufacturing Co.
Ohara Iron Works Co., Ltd.

JAPAN - (Continued)

Ohara Tekko
Okano Valve Mfg. Co. Ltd.
Osaka Tetsuen Kikai Co., Ltd.
Osaka Valve Co., Ltd.
Pulton Chain Co., Inc.
Sakai Iron Works Co., Ltd.
Sanyo Special Steel Company
SekiyuSakuseiki Seisaku K.K.
Shikoku Metal Industries Co., Ltd.
Shinko Wire Co., Ltd.
Showa Valve Co., Ltd.
Sumitomo Cement Co. Ltd.
Sumitomo Metal Industries, Ltd.
Tahara Manufacturing Co., Ltd.
Takamisawa Koki Mfg. Co. Ltd.
Tamotsu Kogyo Kabushiki Kaisha
Teikoku Sangyo Co., Ltd.
Toa Gaigyo Company. Ltd.
Togawa Rubber Mfg. Co., Ltd.
Tokiwa Industrial Co., Ltd.
Tokyo Buhin Kogyo Co., Ltd.
Tokyo Kinsoku Kogyo K.K.
Tokyo Rope Mfg. Co., Ltd.
Tokyo Sokuhan Co., Ltd.
Tone Boring Co., Ltd.
Toshin Kogyo Co., Ltd.
Toyo Valve Co., Ltd.
The Tsubakimoto Chain Mfg. Co., Ltd.
Tsujikawa Mfg. Co. Ltd.
Tsukamoto Seiko Co., Ltd.
Utsue Valve Co., Ltd.
Wakai Valve Mfg. Co., Ltd.
Yahata Machine Mfg. Co., Ltd.
Yoneda Kogyo Co., Ltd.
Yoneki Valve Co., Ltd.
Yoshida Boring Machine Manufacturing Co., Ltd.

KOREA

Hyundai Pipe Co., Ltd.
Ilssin Steel Co., Ltd.
Korea Iron & Steel Works, Ltd.
Korea Steel Pipe Co., Ltd.
Pan=Korea Metal Industrial Co., Ltd.
Pusan Steel Pipe Industrial Co., Ltd.
Union Steel Mfg. Co., Ltd.

W. MALAYSIA

Berjaya Kawat Berhad

MEXICO

Aceros Nacionaîes S.A.
Barrenas de Mexico, S.A.
Camesa, Sociedad Anonima
Cementos Apasco, S.A.
Conjunto Manufacturero S.A. de C.V.
Emca, S.S. de C.V.
Empresas Lanzagorta
FIP, S.A. de C.V.
HYLSA, S.A.
Industrial de valvulas, S.A. de C.V.
Inpamex S.A.
Lanzagorta
Magnaval, S.A. de C.V.
Manufacturas Y Servicios Industriales, S.A.
Panamericana de valvulas S.A. de C.V.
Productos Tubulares Monclova, S.A.
Swecomex, S.A.
T.F. De Mexico, S.A.
Tubacero, S.A.
Tubos de Acero de Mexico, S.A.
Universal de valvulas, S.A.
Valvulas Belg de Mexico, S.A.
Valvulas y Conexiones, S.A.
Vitro, S.A.

NEW ZEALAND

The New Zealand Valve Company Ltd.
Steel Rope Industries Ltd.

NORWAY

Aker Norsco Contracting A/S
A.S. Bergens Medkaniske Verkstader
Elektro Union Offshore A/S
Elkem-Spigerverket a/s, Stal Og Tau
Gummi A/S K. Lund & Co.
A/S Hydraulik Brattvaag
Irgens Larsen A.S.
Kurt Kohorn Ltd. A/S
Donnesberg
Moelven Brug
A/S Norcem
A/S. Normar
Norsk Nydro
A/S Norsk Staaltaugfabrik
North Sea Exploration Services A/S
Nylands Verksted
Pusnes Medkaniske Verksted A.S.
Rotator Norway a.s.
TA-Esco A/S
Unitor Ships Services A/S

PORTUGAL

COMETNA, Companhia Metalurgica Nacional S.A.R.L.
Manoel Rodrigues D'Oliveira SA & Filhos, Ltda.

ROMANIA

Industrialexport
Intreprinderea De Tevi Republica
Intreprinderea De Tevi Roman
Intreprinderea De Utilaj Petrolier
Intreprinderea Mecanica Fina
Intreprinderea "1 Mai"
Intreprinderea Vulcan Bucuresti

SINGAPORE

Avery-Laurence Equipment Pte. Ltd.
Oilfield Mfg. Pte., Ltd.
Oilfield Tubular Services (s) Pte. Ltd.
Van Der Horst Asia Pte. Ltd.

SOUTH AFRICA

Haggie Steel Ropes Limited

SPAIN

Dragados Y Construcciones, S.A.
Laminaciones de Lesaca, S.A.
Sociedad Franco Espanola de Alambres, Cabler y Transportes Aceros
Transformaciones Metalurgicas Especiales, S.A.
Trenzas y Cables de Acero S.A.
Trinidad Cement, Ltd.
Tubacex, C.E. de Tubos por Extrusion, S.A.
Tubos Reunidos, S.A.
Walthon Weir Pacific, S.A.
Valfisa, S.A.
Vininay, S.A.

SWEDEN

AB Bofors-Nohab
Atlas Copco AB
Bulten-Kanthal AB
Gunnebo Bruks Aktiebolag
Lesjofors Aktiebolag

SWEDEN -(Continued)

Ljusne (LW) Chain
SKF Steel
SAAB-SCANIA AB
Sandvik AB
Uddeholms Atkiebolag

SWITZERLAND

Cableworks Brugg Ltd.
Fatzer AG Romanshorn
Industrial & Mining Bit Manufacturing
Schweizerische Seil-Industrie A.G.

TAIWAN

CTCI Corp.
The Far East Machinery Co., Ltd.
Jinn Lung Motor Co., Ltd.

UNITED KINGDOM

Adamson & Hatchett Ltd.
Ansell, Jones & Co., Ltd.
Armstrong Whitworth Ltd.
Automatic Oil Tools Systems Ltd.
Automotive Products Limited
B.D. Specials Ltd.
BLK Alloys Ltd.
BKL Fittings Ltd.
Blue Circle Industries, Ltd.
Bonney Forge Int'l Ltd.
Bradley Laminates Ltd.
John Brereton & Co., Ltd.
John Brereton Flange Div., Doncaster-Moorside Ltd.
Brisco Controls
British Ropes, Ltd.
British Steel Corp.
British Steel Tube Co. Ltd.
Bruntons Ltd.
Burton, Delingpole & Co., Ltd.
J. Caslake Ltd.
Clarke Chapman Ltd.
Compoflex, Ltd.
Corrugated Packing & Sheet Metal Co., Ltd.
Robert Cort & Son Ltd.
Coventry Gauge, Ltd.
Joseph Crawhall & Sons Ltd.
Dawson & Usher, Ltd.
DEMCO Ltd.

UNITED KINGDOM

Desford Tubes Ltd.
Doncaster Moorside Limited
Dorman Diesels Ltd.
Dowty Offshore Limited
Drillcon Industries Ltd.
Euro-Drill Equipment Ltd.
James Fairley Steels
J. H. Fenner & Co., Ltd.
Ferranit Offshore Systems Ltd.
Firth Cleveland Ropes Ltd.
Flextallic Gaskets Ltd.
Flotec Group Ltd.
Frew Brothers & Company, Limited
GKN Group
Glover Brothers, Ltd.
Greengate Industrial Polymers Ltd.
Griflex Products Ltd.
Barton Hall's Ropery Co. Ltd.
Hamblin & Glover Oilfield Services Ltd.
Hamblin Oilfield (Services) Ltd.
Hawkins & Tipson Ltd.
Horstmann Gauge and Metrology Ltd.
Hullite Ltd.
Robert Jenkins Oil & Gas Ltd.
Keeton, Sons & Ltd.
Keyston Cannon Ltd.
Kingston Instrument Co., Ltd.
Latch & Batchelor Ltd.
Linvic Engineering Ltd.
Lion Oil Tool Group
Mardale Engineering Co. Ltd.
Martin, Black & Co. (Wire Ropes) Ltd.
Marwin Limited
Millingford Engineering Co., Ltd.
Moorside Machining Co. Ltd.
Motherwell Bridge Group
Munro & Miller Fittings Ltd.
Norbrit-Pickering Limited
O.I.S. (Oilfield Inspection Services)
Offshore Drilling Supplies Ltd.
The Oil Well Engineering Co., Ltd.
Paxman Diesels Ltd.
Petbow Ltd.
Phoenix Steel Tube Co. Ltd.
Plenty & Son Ltd.
Redpath Dorman Long Ltd.
Renoid Ltd.
Rollo-Hardy Ltd.
Round Oak Steel Works Ltd.
Ruston Diesels Ltd.
The Scottish Wire Rope Co. Ltd.
SEACO (B.P.S.)
Seamore Oil & Gas Processing Ltd.
Sea Oil Services Ltd.
Serck Audco Valves

UNITED KINGDOM - (Continued)

Sigmund Pulsometer Pumps Ltd.
John Shaw Limited
J. K. Smit & Sons Diamond Tools, Ltd.
Stewart Ross & Company, Ltd.
Stow Engineering Company, Ltd.
TK Valve Limited
TI Coventry Gauge Ltd.
TI Offshore
C. M. Taylor & Co., Ltd.
Triangle Valve Co. Ltd.
Tru-Thread Ltd.
Tube Investments Ltd.
Uni-Tube Limited
The United Flexable Metallic Tubing Co., Ltd.
Weir Polypac Ltd.
Weldco Ltd.
Welding Units Ltd.
Whorton Engineers International Ltd.
Wichita Co., Ltd.
Frank Wigglesworth & Co., Ltd.
Wilson Ltd.
Woodhouse & Rixson Flanges Ltd.
Superior Oil Service

VENEZUELA

Bompet de Venezuela
C.A. Conduven
C.V.G. Siderurgica del Orinoco C.A.
Empresas Mito Juan
Fabriuen De Venezuela
Formiconi C.A.
Industrias National Supply
Wireco Venezolana, C.A.

YUGOSLAVIA

Energoinvest
Kisivska Metalna Industrija
NRGO Invest
Zeljezara Sisak

Addendum to the Submission of the Petroleum Equipment Suppliers Association

Non-U.S. Sources of Petroleum Equipment

By Product Category

BLOWOUT PREVENTERS:

Allstack B.O.P. Services
Blowout Products Ltd.
Breda Fucine
Industrialexportimport
Secure Oil Tool Mfg. Ltd.
Wenlen, SA Estrada

BLOWOUT PREVENTERS - Control Systems:

Allstack B.O.P. Services
Blowout Products Ltd.
Four M Oilfield Equipment
Industrialexportimport
Rogui, SA
Troy Equipment Services Ltd.
Urach
Wagner Industrial & Oilfield Equipment Ltd.
Wenlen, SA Estrada

D-SANDER:

Bolland & Cia
Drexel

D-SILTER:

Bolland & Cia
Drexel

DECANTING CENTRIFUGE:

Alfa Laval
Broadbent
Flottweg
Klockner Humboldt

MUD CLEANER:

Bolland & Cia
Drexel
Thule United, Ltd.

MUD PITS:

Bolland & Cia
Drexel

Addendum to the Submission of the Petroleum Equipment Suppliers Association

Non-U.S. Sources of Petroleum Equipment

By Country of Origin

AUSTRALIA

B & B

AUSTRIA

S.B.S.

BRAZIL

S.K.A.

CANADA

Allstack B.O.P. Services
Four M Oilfield Equipment
Secure Oil Tool Mfg. Ltd.
Troy Equipment Services Ltd.
Wagner Industrial & Oilfield Equipment

DENMARK

Alfa Laval

W. GERMANY

Flottweg
Urach

MEXICO

Roqui

VENEZUELA

Servico Hydrocarb
Suplidora Nacional C.A.
Venezuela Oil Tools
Vivalo

Non-U.S. Sources of Petroleum Equipment

By Country of Origin

Alphabetical Listing

AB Bofors-Nohab, Sweden
ACB (Ateliers et Chantiers de Bretagne), France
ACEC (Ateliers de Constructions Electriques de Charlerio), Belgium
ACINDAR, Industria Argentina de Aceros S.A., Argentina
AVAN S.A.I.C., Argentina
Acciaierie e Ferriere Lombarde FALCK S.p.A., Italy
Acciaierie Tubificio Arvedo, Italy
Aceros Nacionales S.A., Mexico
Adamson & Hatchett Ltd., United Kingdom
Aker Norwco Contracting A/S. Norway
Alessio Tubi S.p.A., Italy
The Algoma Steel Corp., Ltd., Canada
Alsthom Atlantique, Division Moteurs, France
Alsthom Atlantique, Neyrfor, France
Amsted-Siemag Kette GmbH, W. Germany
Anglo-Continental Ropes S.A., Belgium
Ansell, Jones & Co., Ltd., United Kingdom
Arai Iron Works Co., Ltd., Japan
Arbed-Felten & Guilleaume S.A., W. Germany
Argo Sales, Ltd., Canada
Argus Gesellschaft M.B.H., W. Germany
Armstrong Whitworth Ltd., United Kingdom
Arntz-Optibelt-KG, W. Germany
Athens Pipe Works S.A., Greece
Atlas Copco AB, Sweden
Australian Wire Industries Pty., Ltd., Australia
Automatic Oil Tools Systems Ltd., United Kingdom
Automotive Products Limited, United Kingdom
Avery-Laurence Equipment Pte. Ltd., Singapore
Awaji Sangyo K.K.,Japan

B.D. Specials Ltd., United Kingdom
BKL Fittings Ltd., United Kingdom
BLK Alloys Ltd., United Kingdom
BSL (Bignier Schmid-Laurent), France
Barber Industries, Canada
Barrenas de Mexico, S.A., Mexico
Basset-Bretagne-Loire, France
A.S. Bergens Medkaniske Verkstader, Norway
Bergrohr GMBH, W. Germany
Berjaya Kawat Berhad, W. Malaysia
J. Bertram, K.G., W. Germany
Bharat Heavy Electricals Ltd., India
Blohm & Voss AG, W. Germany
Blow Out Products, Ltd., Canada
Blue Circle Industries, Ltd., United Kingdom
Bolland & Cia. S.A., Argentina
Bombay Wire Ropes Ltd., India
Bompet de Venezuela, Venezuela
Bonney Forge Int'l Ltd., United Kingdom
Borsig GmbH, W. Germany
Borsig Hartmann Valve Ltd., Canada

Bradley Laminates Ltd., United Kingdom
Brastech Industrials, Brazil
Brdr. Christensen s Haner A/S, Denmark
Breda Fucine S.p.A., Italy
John Brereton & Co., Ltd., United Kingdom
John Brereton Flange Div., Doncaster-Moorside Ltd., United Kingdom
Brisco Controls, United Kingdom
Brissonneau & Lotz Marine, France
British Ropes, Ltd., United Kingdom
British Steel Corp., United Kingdom
British Steel Tube Co. Ltd., United Kingdom
Bronzavia, France
Bruce International, Bahamas
Bruck GmbH Rohrverbindungen, W. Germany
Bruntons Ltd., United Kingdom
Bulten-Kanthal AB, Sweden
Burton, Delingpole & Co., Ltd., United Kingdom

CBV Equipetrol, Brazil
CBV Industrial, Brazil
CBV Industria Mecanica S.A., Brazil
CGE Group, France
C.I.M.A.F., Brazil
CIT Alcatel, France
CTCI Corp., Taiwan
C.V.G. Siderurgica del Orinoco C.A., Venezuela
Cableworks Brugg Ltd., Switzerland
Camesa, Sociedad Anonima, Mexico
Camlow, Argentina
Canada Cement Lafarge, Ltd., Canada
Canadawerk, Austria
Canadian Crown Steel Tank Co., Ltd., Canada
Canvil, Ltd., Canada
Carlo, S.A., Argentina
J. Caslake Ltd., United Kingdom
Ceca S.A., France
Celle Maschinafabriken, W. Germany
Celler Maschinenfabrik Gebruder Schafer, W. Germany
Cementos Apasco, S.A., Mexico
Ceria, France
Chemische Fabriek Servo B.V., Holland
Clarke Chapman Ltd., United Kingdom
Clemmer Industries Ltd., Canada
Coflexip, France
Colmant Cuvelier, France
Cometarsa S.A.I.C., Argentina
COMETNA, Companhia Metalurgica Nacional S.A.R.L., Portugal
Comex Group, France
Compagnie des Ciments Belges, Belgium
Companhia Di Gmento Portland Alvorade, Brazil
Compoflex, Ltd., United Kingdom
C.A. Conduven, Venezuela
Confab Industrial S.A., Brazil
Conjunto Manufacturero S.A. de C.V., Mexico

Corinth Pipeworks, Greece
Corrugated Packing & Sheet Metal Co., Ltd., United Kingdom
Robert Cort & Son Ltd., United Kingdom
Costruzioni Hydro-Pneumatic, Italy
Cougar Tool Division, OPI Ltd., Canada
Coventry Gauge, Ltd., United Kingdom
Joseph Crawhall & Sons Ltd., United Kingdom
Creusot-Loire Group, France
Csepel Works, Hungary

Daido Seiko, Japan
Daido Steel Co., Ltd., Japan
Dai-Ichi Sokuhan Works, Ltd., Japan
Daisho Valve Industry Co., Ltd., Japan
Dalmine S.p.A., Italy
Dalmine Siderca S.A.I.C., Argentina
Danco Talleres, Argentina
Danco Tolleres Metalurgicos S.R.I., Brazil
Dawaguchi Metal, Japan
Dawson & Usher, Ltd., United Kingdom
Deer Park Engineering Pty., Ltd., Australia
DEMCO Ltd., United Kingdom
Den Haan Staalkabelfabriek N.V., Holland
Deriver, S.p.A., Italy
Desford Tubes Ltd., United Kingdom
Deutsche Audco GmbH, W. Germany
De Vries Robbe & Co., N.V., Holland
Dewrance MacNeil & Company, Ltd., India
Diamant Boart S.A., Belgium
Diamont Bort of Argentina, Argentina
Dipl.-Ing. Werner Hartmann KG, W. Germany
Dominion Bridge Company Limited, Canada
Doncaster Moorside Limited, United Kingdom
Donnesberg, Norway
Dorman Diesels Ltd., United Kingdom
Dowty Offshore Limited, United Kingdom
Dragados Y Construcciones, S.A., Spain
Drahtseilerei Gustav Kocks GmbH, W. Germany
Drahtseilwerke Saar G.m.b.H., W. Germany
Dreco, Ltd., Canada
Drillcon Industries Ltd., United Kingdom
Dyckerhoff Zementwerke A.G., W. Germany

EMH (Equipments Mecaniques et Hydrauliques), France
Edemsarda SpA, Italy
Eisenwerk - Gesellschaft Macimillanshutte mbH, W. Germany
Elektro Union Offshore A/S, Norway
Elkem-Spigerverket a/s, Stal Og Tau, Norway
Emca, S.S. de C.V., Mexico
Empresa Colombiana de Cables S.A., Colombia
Empresas Lanzagorta, Mexico
Empresas Mito Juan, Venezuela
Energoinvest, Yugoslavia
Engrenages et Reducteurs, France

Equipetrol S.A., Brazil
Equipment Petrolier, France
Eschweiler Bergwerks-Verein AG, W. Germany
Estel Rohr AG, W. Germany
Est. Mecanicos Jone S.A.I. y C.
Est. Metalurgicos Santa Rosa S.A., Argentina
Ethyd, France
Euro-Drill Equipment Ltd., United Kingdom

FAVRA, S.A.I.C., Argentina
FIP, S.A. de C.V., Mexico
F.I.T. Ferrotubi Corbetta S.p.A., Italy
Fabriuen De Venezuela, Venezuela
James Fairley Steels, United Kingdom
The Far East Machinery Co., Ltd., Taiwan
Fatzer AG Ramanshorn, Switzerland
Felix Simon S.A.C.I.F.A., Argentina
Felten & Guilleaume AG, Austria
J. H. Fenner & Co., Ltd., United Kingdom
Ferranti Offshore Systems Ltd., United Kingdom
Firth Cleveland Ropes Ltd., United Kingdom
Flextallic Gaskets Ltd., United Kingdom
Flopetrol, France
Flotec Group Ltd., United Kingdom
Formiconi C.A., Venezuela
The Fort William Co., Ltd., India
Frew Brothers & Company, Limited, United Kingdom
Fuji Tekko K.K., Japan
Fukuda Kogyo Co. Ltd., Japan
Futawa Flange Works Co. Ltd., Japan

GHH Sterkrade AG, W. Germany
GKN Group, United Kingdom
Galaxy Machine & Mfg. Co. Ltd., Canada
Galaxy Oilfield Service Ltd., Canada
Galli & Cassina S.R.L., Italy
Geomecanique, France
Gilardina, Italy
Glover Brothers, Ltd., United Kingdom
C. Goldhan-Oifeldausrustungen G.M.B.H., W. Germany
Graffenstaden Division, France
Greengate Industrial Polymers Ltd., United Kingdom
Greening Donald Ltd., Canada
Griffith Oil Tool Ltd., Canada
Griflex Products Ltd., United Kingdom
Grondona, S.p.A., Italy
Grove Italia SpA, Italy
Guiseppe & Fratello Redailli Soc. p. Az., Italy
Gummi A/S K. Lund & Co., Norway
Gunnebo Bruks Aktiebolag, Sweden
HYLSA, S.A., Mexico
Haggie Steel Ropes Limited, South Africa
Barton Hall's Ropery Co. Ltd., United Kingdom
Hamanaka Chain Mfg. Co., Ltd., Japan
Hamblin & Glover Oilfield Services Ltd., United Kingdom

Hamblin Oilfield (Services) Ltd., United Kingdom
Hamilton Gear & Machine Co., Canada
Haruta Valve Mfg. Co. Ltd., Japan
Hawkins & Tipson Ltd., United Kingdom
Georg Heckel G.m.b.H., W. Germany
Heinr. Puth Kom. Ges., W. Germany
Hendrik Veder B.B., Holland
Hercules France S.A., France
Herman von Rautenkranz, Internationale Tiefbohr GmbH & Co. KG, ITAG, W. Germany
Hirata Valve Industry, Ltd., Japan
Hisaka Works, Ltd., Japan
Hitachi Metals, Ltd., Japan
Hoechst AG, W. Germany
Hoesch Roehrenwerke AG, W. Germany
Hofland Pakking b.v., Holland
Holec, Holland
Horstmann Gauge and Metrology Ltd., United Kingdom
Huber-Gray Machinen-und AG M.B.H., Austria
Hubner Vamag AG & Co. K.G., Austria
Hullite Ltd., United Kingdom
A/S Hydraulik Brattvaag, Norway
Hyundai Pipe Co., Ltd., Korea

IBRAVE - Industrias Brasile iras de Valvulas e Equipmentos Ltda., Brazil
IKS, Japan
IMS - Industria Metalurgica de Salvador S.A., Brazil
Igeta Wire Rope Co., Ltd., Japan
Ilssin Steel Co., Ltd., Korea
The Indian Tube Co., Ltd., India
Industrial & Mining Bit Manufacturing, Switzerland
Industrial de valvulas, S.A. de C.V., Mexico
Industrialexport, Romania
Industrial National Supply, Venezuela
Industrias Pirelli, S.A.I. y C., Argentina
Industrie Pirelli S.p.A., Italy
Inpamex S.A., Mexico
Interprovincial Steel & Pipe Corp., Ltd., Canada
Intreprinderea De Tevi Republica, Romania
Intreprinderea De Tevi Roman, Romania
Intreprinderea De Utilaj Petrolier, Romania
Intreprinderea Mecanica Fina, Romania
Intreprinderea "1 Mai", Romania
Intreprinderea Vulcan Bucuresti, Romania
Irgens Larsen A.S., Norway
Ishida Valve Mfg. Co., Ltd., Japan
Itag, celle, W. Germany
Itoh, Japan
Izumi Seisakusho Co., Ltd., Japan

J. K. Steel & Industries, Ltd., India
Japan Mechanical Chain Mfg. Co., Ltd., Japan
The Japan Steel Works Ltd., Japan
Robert Jenkins Oil & Gas Ltd., United Kingdom
Jeumont-Schneider, France
John Valves Division Wornald International, Australia

K.K. Itabashi Kikai Seisakusho, Japan
Kanda Sangyo Co., Ltd., Japan
Kashiwara Machine Manufacturing Co., Ltd., Japan
Kawaguchi Kinsoki, Japan
Kawasaki Steel Corp., Japan
Keeton, Sons & Ltd., United Kingdom
Kempchen & Co., G.m.b.H., W. Germany
Kent Machine & Mfg. Ltd., Canada
Keystone Cannon Ltd., United Kingdom
Kimura Yasaku Co., Ltd., Japan
Kingston Instrument Co., Ltd., United Kingdom
Kinkakikai Co., Ltd., Japan
Kisivska Metalna Industrija, Yugoslavia
Kitamura Valve Mfg. Co. Ltd., Japan
Kitaziwa Valve Company Ltd., Japan
Kleber-Colombes, France
Klippon Electricals Ltd., W. Germany
Kloeckner-Humboldt-Deutz AG, W. Germany
Knoll Rig & Equipment Manufacturing Co., Ltd., Canada
Kobayashigen Sangyo Co. Ltd., Japan
Kobe Steel, Ltd., Japan
Kurt Kohorn Ltd. A/S, Norway
Koku Steel Wire, Ltd., Japan
Kokubo Tekksho, Japan
Kolsch-Folzer-Werke AG, W. Germany
Korea Iron & Steel Works, Ltd., Korea
Korea Steel Pipe Co., Ltd., Korea
Kubota, Ltd., Japan
Kuroda Precision Industries, Ltd., Japan

Lafarge, France
Laminaciones de Lesaca, S.A., Spain
Laminoirs Trefileries Cableries de Lens, France
LANZA S.p.A., Italy
Lanzagorta, Mexico
Latch & Batchelor Ltd., United Kingdom
Laxmi Udyog, India
LeGrand Industries, Inc., Canada
LeLis Ltd., Belgium
Leotert, W. Germany
Lesjofors Aktiebolag, Sweden
Linvic Engineering Ltd., United Kingdom
Lion Oil Tool Group, United Kingdom
Ljusne (LW) Chain, Sweden
Friedrich Luetert GmbH & Co., W. Germany
Jinn Lung Motor Co., Ltd., Taiwan

James McLarty & Son, Australia
Magnaval, S.A. de C.V., Mexico
Malbranque Serseg Valve Pressure Vessel, France
Mannesmann S/A, Brazil
Mannesmann Demag Meer, W. Germany
Mannesmannrohren-Werke AG, W. Germany
Manoel Rodrigues D'Oliveira SA & Filhos, Ltda., Portugal
Manufacturas Y Servicios Industriales, S.A., Mexico

—

Mapegaz S.A., France
Mario Maraldi S.p.A., Italy
Mardale Engineering Co. Ltd., United Kingdom
Narep Division, France
Maroni Sebastiano S.p.A., Corderie Trafilerie, Italy
Martin, Black & Co. Ltd., United Kingdom
Martin, Black Wire Ropes of Canada, Ltd., Canada
Maruichi Steel Tube Ltd., Japan
Marwin Limited, United Kingdom
S.P.A. James Massarenti, Italy
Matra Offshore, France
Mecafrance S.A., France
Merex Argentine S.A., Argentina
Merip, France
Metal Forgings Private Limited, India
Metalghisi, Italy
Metalurgica Bellucci S.A.I.C.F.I.A., Argentina
Micro-Mecanique Pyreneene, France
Middle East Tube Co., Israel
Millingford Engineering Co., Ltd., United Kingdom
Mitsubishi, Japan
Mitsubishi Heavy Industries, Japan
Mitsubishi Steel Industries, Japan
Mitsuboshi Belting Ltd., Japan
Mitsumoto Valve Mfg. Co., Ltd., Japan
Moelven Brug, Norway
Mohatta & Heckel Ltd., India
Moller-Werke GMBH, W. Germany
Moorside Machining Co. Ltd., United Kingdom
Motherwell Bridge Group, United Kingdom
Munro & Miller Fittings Ltd., United Kingdom

N.A.T. (Novelles Applications Technologiques), France
NRGO Invest, Yugoslavia
Nakamura Metallic Industry Co., Ltd., Japan
The New Zealand Valve Company Ltd., New Zealand
Nicola Galperti & Figlio, Italy
Nihon Cement Co., Ltd., Japan
Nihon Kosg Industry Co., Ltd., Japan
Niigata Engineering Company, Japan
Nippon Ball Valve Co. Ltd., Japan
Nippon Chain & Anchor Co., Ltd., Japan
Nippon Chuzo K.K., Japan
Nippon Daiyo Valve Co., Ltd., Japan
Nippon Kikan Tsugite Kabushiki Kaisha, Japan
Nippon Kokan Kabushiki Kaisha, Japan
Nippon Steel Corp., Japan
Nippon Steel Wire Rope Co., Ltd., Japan
Nippon Valqua Industries, Ltd., Japan
Nishimura Koki Co., Ltd., Japan
Norbrit-Pickering Limited, United Kingdom
A/S Norcem, Norway
A/S. Normar, Norway
Norsk Nydro, Norway
A/S Norsk Staaltaugfabrik, Norway

North Sea Exploration Services A/S, Norway
Northern Rig Lites Ltd., Canada
Nova Hut Klementa Gottwalda, Narodni Podnik, Czechoslavakia
Nuovo Pignone, SpA, Italy
Nylands Verksted, Norway

O.I.S. (Oilfield Inspection Services), United Kingdom
O.N. Industries, Ltd., Japan
OSG Manufacturing Co., Japan
Offshore Drilling Supplies Ltd., United Kingdom
Ohara Iron Works Co., Ltd., Japan
Ohara Tekko, Japan
Oilfield Mfg. Pte., Ltd., Singapore
Oilfield Tubular Services, Singapore
The Oil Well Engineering Co., Ltd., United Kingdom
Okano Valve Mfg. Co. Ltd., Japan
ORION Officine Meccaniche Specializzate, Italy
Osaka Tetsuen Kikai Co., Ltd., Japan
Osaka Valve Co., Ltd., Japan

Paderwerk Gebr. Benteler, W. Germany
Panamericana de valvulas S.A. de C.V., Mexico
Pan-Korea Metal Industrial Co., Ltd., Korea
Paxman Diesels Ltd., United Kingdom
PERAR S.p.A., Italy
Perolo S.A., France
Persico Pizzamiglio S.A., Brazil
Petbow Ltd., United Kingdom
Peter-BTR, Gummiwerke AG, W. Germany
Petrolvalves S.r.L., Italy
Petromeca, France
Petromecanica S.A.I. y C., Argentina
Phillips Driscopipe, Inc., Canada
Phillips Extruded Products, Ltd., Canada
Phoenix Steel Tube Co. Ltd., United Kingdom
Plenty & Son Ltd., United Kingdom
Productos de Acero S.A. (PRODINA), Chile
Productos Tubulares Monclova, S.A.
Pulton Chain Co., Inc., Japan
Pusan Steel Pipe Industrial Co., Ltd., Korea
Pusnes Medkaniske Verksted A.S., Norway

Quinn's Oilfield Supply Ltd., Canada

R & D Machine Ltd., Canada
ROP s.a., France
RSV, Holland
Rademakers Aandrijvingen B.V., Holland
Raimondo S.p.A., Italy
Rauma Pepola Oy, Finland
Recon Manufacturing Co., Canada
Rector-Gray Ltd., Canada
Redpath Dorman Long Ltd., United Kingdom
Reinhold Industries Ltd., Canada
Renn Industries, Inc., Canada

Renoid Ltd., United Kingdom
B. C. Richards & Co. Pty. Ltd., Australia
Robinson Piping Products Ltd., Canada
Rohrenwerke Bous/Saar GmbH, W. Germany
Rollo-Hardy Ltd., United Kingdom
Rotator Norway a.s., Norway
Roulands Fabriker, Ltd., Denmark
Round Oak Steel Works Ltd., United Kingdom
Rusco Hnos S.A., Argentina
Ruston Diesels Ltd., United Kingdom

S.A. Des Hauts Fourneaux De La Chiers, France
S.E.T.A., S.p.A., Societa Europea Tubifici e Acciaierie S.p.A., Italy
SKF Steel, Sweden
SMF Creusot-Loire, France
SMF International, France
SAAB-SCANDIA AB, Sweden
Sachtleben Chemie GmbH, W. Germany
Sacm, France
Sakai Iron Works Co., Ltd., Japan
Salzgitter Maschinen Und Anlagen AG, W. Germany
Samega, France
Sandvik AB, Sweden
Sanyo Special Steel Company, Japan
Saut Du Tarn, France
Scholten, Holland
W.A. Scholten's Chemische Fabrieken b.v., Holland
Schweizerische Seil-Industrie A.G., Switzerland
The Scottish Wire Rope Co. Ltd., United Kingdom
SEACO (B.P.S.), United Kingdom
Seamore Oil & Gas Processing Ltd., United Kingdom
Sea Oil Services Ltd., United Kingdom
Sedis, France
Seilindustrie Ernst Deifuss, W. Germany
Sekiyu Sakuseiki Seisaku K.K., Japan
Sella, S.p.A., Italy
Semperit Aktiengesellschaft, Austria
Serck Audco Pty., Ltd., Australia
Serck Audco Valves, United Kingdom
Sereg Schlumberger, France
John Shaw Limited, United Kingdom
Shikoku Metal Industries Co., Ltd., Japan
Shinko Wire Co., Ltd., Japan
Showa Valve Co., Ltd., Japan
Siam Di Tella Ltda, Argentina
Sigmund Pulsometer Pumps Ltd., United Kingdom
J. K. Smit & Sons Diamond Tools, Ltd., United Kingdom
Sociedad Franco Espanola de Alambres, Cabler y Transportes Aceros, Spain
Societe Des Trefileries De Chatilon - Gorcy, France
Societe Nouvelle de Saut du Tarn, France
Societe Pyreneenne de Mecanique, France
Sofresid, France
South India Wire Ropes Limited, India
St. Egydyer Eisen-und Stahl Industrie-Gesellschaft, Austria
Stabylia, France

Steel Rope Industries Ltd., New Zealand
Stelco Inc., Canada
Stewart Ross & Company, Ltd., United Kingdom
Stow Engineering Company, Ltd., United Kingdom
Sumitomo Cement Co. Ltd., Japan
Sumitomo Metal Industries, Ltd., Japan
Superior Oil Service, United Kingdom
Swecomex, S.A., Mexico

TA-Esco A/S, Norway
T.F. De Mexico, S.A., Mexico
TFW Techniflow s.p.a., Italy
TI Coventry Gauge Ltd., United Kingdom
TI Offshore, United Kingdom
TK Valve Limited, United Kingdom
T.P.S. Industries Ltd., Canada
Tahara Manufacturing Co., Ltd., Japan
Takamisawa Koki Mfg. Co. Ltd., Japan
Tamotsu Kogyo Kabushiki Kaisha, Japan
C. H. Taylor & Co., Ltd., United Kingdom
Tehran Cement Co., Ltd., Iran
Teikoku Sangyo, Japan
Teufelberger, K., Austria
Thevignot S.A., Ets, France
Thomassen Holland B.V., Holland
Thomson-CSF AVS, France
Thomson-CSF Dasm, France
Thyssen Wetfaelische Union AG, W. Germany
Tiefbahrgerate-und Muschinenfubrik, Austria
Toa Gaigyo Company, Ltd., Japan
Togawa Rubber Mfg. Co., Ltd., Japan
Tokiwa Industrial Co., Ltd., Japan
Tokyo Buhin Kogyo Co., Ltd., Japan
Tokyo Kinsoku Kogyo K.K., Japan
Tokyo Rope Mfg. Co., Ltd., Japan
Tokyo Sokuhan Co., Ltd., Japan
Tool Research, Argentina
Tone Boring Co., Ltd., Japan
Tormene, s.n.c., Italy
Toshin Kogyo Co., Ltd., Japan
Toyo Valve Co., Ltd., Japan
Transformaciones Metalurgicas Especiales, S.A., Spain
Trefilerie & Cablerie J. Wurth & Cie., France
Trenzas y Cables de Acero S.A., Spain
Triangle Valve Co. Ltd., United Kingdom
Trinidad Cement, Ltd., Spain
Tri-Service Machine Ltd., Canada
Tru-Thread Ltd., United Kingdom
The Tsubakimoto Chain Mfg. Co., Ltd., Japan
Tsujikawa Mfg. Co. Ltd., Japan
Tsukamoto Seiki Co., Ltd., Japan
Tubacero, S.A., Mexico
Tubacex, C.E. de Tubos por Extrusion, S.A., Spain
Tube Investments Ltd., United Kingdom
Tubemakers of Australia Ltd., Australia

Tubificio Dalmine Italsider S.p.A., Italy
Tubos de Acero de Mexico, S.A., Mexico
Tubos Reunidos, S.A., Spain

U.M.D. International, France
Uddeholms Atkiebolag, Sweden
Union Industrielle et D'Entreprise, France
Union Steel Mfg. Co., Ltd., Korea
The United Flexable Metallic Tubing Co., Ltd., United Kingdom
United Ropeworks, Holland
United Wire Ropes, Ltd., India
Unitor Ships Services A/S, Norway
Uni-Tube Limited, United Kingdom
Universal de valvulas, S.A., Mexico
Universal Industries Ltd., Canada
Usha Wire Ropes, India
Usines a Tubes de la Meuse, Belgium
Usines Gonzales Cock S.A., Belgium
Usinor, France
Utsue Valve Co., Ltd., Japan

VAG-Armaturen GmbH, W. Germany
Valexy, France
Valfisa, S.A., Spain
Vallourec, France
VALTI, France
Valvosider s.r.l., Italy
Valvulas Belg de Mexico, S.A., Mexico
Valvulas y Conexiones, S.A., Mexico
Van Der Horst Asia Pte. Ltd., Singapore
Vannes Darling France Sarl, France
Vereinigte Drahtseilwerke GmbH, W. Germany
Vereinigte Edelstahlwerke AG, Austria
Vininay, S.A., Spain
Vitkovice Steel and Engineering Works of Klement Gottwald, Nat. Corp., Czechoslavakia
Vitro, S.A., Mexico
VOEST-ALPINE AG, Austria

Waagner-Biro Aktiengesellschaft, Austria
Wakai Valve Mfg. Co., Ltd., Japan
Walthon Weir Pacific, S.A., Spain
Weidmuller K.G., W. Germany
Weir Polypac Ltd., United Kingdom
Weldco Ltd., United Kingdom
Welding Units Ltd., United Kingdom
Wenlen, S.A., Argentina
Whorton Engineers International Ltd.
Wichita Co., Ltd., United Kingdom
Frank Wigglesworth & Co., Ltd., United Kingdom
Wilh. Bitter, Armaturenfabrik, W. Germany
Wilson Ltd., United Kingdom
Win-Lyn, Argentina
Wireco Venezolana, C.A., Venezuela
Wire Rope Industries, Ltd., Canada
Wire Rope Works Messilot, Ltd., Israel
Alfred Wirth & Company KG, W. Germany
Wirth Maschinen-Und Bohrgerate Fabrik GmbH, W. Germany
Gustav Wolf, W. Germany
Woodhouse & Rixson Flanges Ltd., United Kingdom
Wrights Canadian Ropes Ltd., Canada

Yahata Machine Mfg. Co., Ltd., Japan
Yoneda Kogyo Co., Ltd., Japan
Yoneki Valve Co., Ltd., Japan
Yoshida Boring Machine Manufacturing Co., Ltd., Japan

Zeljezara Sisak, Yugoslavia
Zimmerman & Jansen G.m.b.H., W. Germany

Senator HEINZ. Thank you very much, Mr. Neely.

First, let me compliment all six of our witnesses on how they made extremely thoughtful statements. Each of your presentations is in the most part quite different.

My first question really I'm not addressing to Mr. Giffen or Mr. Neely because they have answered it—would be the extent to which any of the other four gentlemen—Mr. Chapman, Mr. McQuade, Mr. O'Keefe, or Mr. Downey—have any financial or dollar estimates of the cost of U.S. foreign policy export controls in terms of lost business and/or any specific examples of Japanese or European countries taking advantage of U.S. export controls to enlarge their business opportunities or share of the market? That was addressed by Mr. Giffen and Mr. Neely. Mr. Chapman, do you have any specifics that you care to illustrate?

Mr. CHAPMAN. Yes, Mr. Chairman. This information has been shared with the committee but I'm delighted to have the opportunity to bring it to the attention of the subcommittee.

PIPELINE EQUIPMENT TO THE SOVIET UNION

Speaking specifically of Caterpillar's experience in the sale of pipeline equipment to the Soviet Union, we began such sales back in the very late 1960's and through 1978 had 85 percent of the market for this size pipelayer with the Soviet Union. Beginning with the first restrictions on sales of pipelaying equipment in 1978—through 1981—our Japanese competitors sold 1,997 units versus our 336 units.

In effect, an 85 percent share of the market was reversed. Now the Japanese have 85 percent of the market. And only last week the announcement was made that they had received an order for an additional 500 machines.

To put those figures in perspective, if we had maintained our 85 percent share of the Soviet market from 1978 through 1981 the SE additional sales would have amounted to, 5,000 man years of employment within our own company, and 10,000 man years with suppliers. Quite frankly, the case of the sanctions and the previous requirement for validated licenses has meant the effective loss of this market to our company and, as has been stated here several times, we really have achieved nothing in return for it.

Senator HEINZ. Do any of the other three witnesses have any specifics they'd care to offer at this point?

Mr. GIFFEN. I have specifics on several transactions that have been lost other than the one I gave. I will give you a second type of an example that really falls right within the area of Mr. Neely, and that is in the oil and gas and oil field equipment area.

As you know, the Soviet Union has a very major program to expand its energy production from 1978 through 1980 the Soviets made a decision to expand in three major areas; offshore, tertiary recovery, and deep-well drilling. They had a list of projects which was extensive that they wanted to do them with American companies.

Armco signed an aide memoire with the Soviets in October 1979 covering approximately 20 of those projects and they were major products. With the first Afghanistan sanctions that aide memoire was canceled and we have not been able to revive the project since that time.

Another specific project—and one which is very near and dear to our hearts—involves pipe sales. Armco has a plant in Ambridge, Pa., which produces pipe. At the present time there is an abundance of drill pipe, tubing, and casing in the world. Up until April of last year that facility was operating at 100 percent of capacity. Since May of last year, it has been shut down. We have had to let go some 1,400 employees. The fact is, Mr. Chairman, we can't seem to get export licenses to sell pipe to the Soviet Union although we have some 60,000 tons in inventory, even though our Japanese competitors and Western European competitors are selling that very same pipe.

That's just one example of where we got caught up in the sanctions and where it hits home.

Senator HEINZ. I realize you have a stronger position on this, which is with the exception of multilateral agreements to repeal section 6. Would placing the burden of proof, as I propose in my legislation, of showing that foreign availability does not exist after a first showing by the industry or company involved constitute sufficient improvement in protection to be taken seriously?

NATIONAL SECURITY CONTROL PROVISIONS

Mr. GIFFEN. Let me answer that in two ways, Mr. Chairman. My first answer is, yes, it would, if you leave foreign policy controls in the act. The problem is, that many of us in the business community detect a shift in emphasis by those who are in control of the licensing process today from foreign policy controls to national security controls. What they are doing is using the national security control provisions for really what appear to be foreign policy purposes.

The best example I can give you of that, Mr. Chairman, is the example of the denial of our electrical steel technology license. When our electrical steel facility was canceled, it was not canceled under the foreign policy provisions. It was canceled under the authority of the national security provisions. So while I argue that we must do away with the foreign policy provisions, I would also ask this committee to consider those national security provisions to tighten them up and establish some standard and direction for those who are administering them.

Senator HEINZ. I think you make on national security controls a very good point and we do intend to create a record where we will be able to tighten those up.

We have five bells which means I have about 5 minutes to go and vote. So I'm going to recess these hearings for about 10 minutes. We will reconvene in 10 minutes and complete the questioning. If you could all still be here, I would appreciate it. If one or another of you must leave for some other purpose, I understand. But we will recess for approximately 10 minutes.

[Recess.]

Senator HEINZ. The International Finance Subcommittee will come to order.

Let me communicate to you that we are going to be interrupted soon by another vote. We have about 10 or 15 minutes to wrap up the hearing and I will try to do that with your help.

Let me ask if there are any other examples of lost business, and I suspect some of you do have them, that you, if you would, Mr. O'Keefe—and you've indicated you do have such examples—would you be willing to submit them for the record?

Mr. O'KEEFE. Yes, sir. They are in the record.

Senator HEINZ. Very well. Thank you very much.

Mr. DOWNEY. Mr. Chairman, on that point, every year, the administration must submit to the Congress a report on the specific costs of each of the foreign policy controls in accordance with the sunset provisions that are in the current act. I encourage you to just leaf through the last report or the report for the year before. It will give you specific information on the costs. I invite you particularly to look at the way the report frames the benefits, what is the foreign policy purpose and how effective it is. It is utter nonsense.

Senator HEINZ. I thank you for both your description and the attention to that detail and we will do so. As a matter of fact, last year I did do that, and sent a letter to the administration being somewhat critical you might say, using some phraseology not dissimilar to that which you used yourself.

I suppose one question that is really at the heart of section 6, three or four of you as I understand it would like to repeal it except in cases where it would be multilateral in its application. Am I accurate?

Mr. DOWNEY. Mr. Chairman, in our view, we would wish to leave in the section that is in the present act that applies controls for crime control equipment. It's just more repugnant for an American company to be involved in export of thumbscrews or cattle prods to certain countries.

Senator HEINZ. Yes, with that exception. Mr. O'Keefe characterized the section 6 as an attractive nuisance and so it would seem to be. There are two ways to deal with an attractive nuisance.

In my home town of Pittsburgh a swimming pool is declared an attractive nuisance and one of the things you can do is either drain the swimming pool and fill it in, which is what is proposed here by some of you, or you can fence it and put a sufficiently sophisticated padlock with the right combination on it that you safeguard it from becoming an attractive nuisance. And the method used in my legislation is the latter, opposed to the former.

If we were to proceed with the latter notion, that is to retain section 6, a good many of you, including those who favor repeal of section 6, have made some helpful suggestions as to how we could make sure that it works a good deal better than it does. Let me ask you, if I may, a series of questions.

Now I think you have all addressed—well, some of you have addressed the time limit on foreign policy controls, currently 1 year. Several of you said it should be limited to 6 months. Is there any disagreement with that?

Does anybody favor anything longer or shorter than 6 months? [No response.]

Senator HEINZ. Very well. In terms of import controls, one of you suggested that they should not be made automatic with the application of export controls. Frankly, my intent in making them automatic with the imposition of export controls was to make the decision to impose export controls a good deal more thoughtful. If you simply make import controls permissive rather than automatic, you create a very different situation.

Mr. Downey, I think it was you who suggested they should not be automatic.

Mr. **Downey**. Yes, Mr. Chairman, because in fact the way your bill is framed, as I understand it, you sort of give and take all at once. The bill mouldes for an automatic imposition of an import control—let's take South Africa. We have a foreign policy control now on South Africa. Under your bill, automatically the President would have to impose a control on all imports from South Africa except he may make any exceptions he wishes. I expect any President is going to say, "I will accept all imports." That's the way it will happen and so we end up with not a great advantage.

I am all for your theme, which is to require the President to think a little bit before he imposes this control, but it's a question of automaticity that is given and taken which doesn't add a great deal. The weight still falls on the vulnerable export sector, with no indication it's going to achieve any effect.

Senator **Heinz**. Now I sense there was some disagreement on that. Mr. Chapman or Mr. McQuade, one or the other of you favored the import control section.

Mr. **McQuade**. I don't think I commented on it, but my opinion is it would be better not to have that clause. It seems to me that that should be a separate judgment. It's potentially troublesome and doesn't have enough advantage to justify it.

Senator **Heinz**. Do any of the rest of you have any comment on that?

Mr. **O'Keefe**. Yes, sir. I would like to just offer a word on all imports. All is just a little too inclusive in my opinion and I think that could be modified.

Senator **Heinz**. Any other comment on that section?

Mr. **Chapman**. I think the Roundtable position would be similar to Mr. McQuade's feeling; it's better to put a padlock on rather than repeal it.

Senator **Heinz**. Let's turn to the padlock a little bit. Foreign availability to my mind is probably as important a key as we have here and I proposed several features in my legislation to try and nail down foreign availability much more carefully if we're going to have anything in the way of unilateral controls.

QUARTERLY REPORTS TO ASSESS FOREIGN AVAILABILITY

One thing I proposed is a quarterly report on the operations and improvement of the Government's ability to assess foreign availability. Commerce acceptance of credible assertions of foreign availability unless able to present definitive evidence to the contrary, and specific funds allocated toward foreign availability assessment. As you know, Commerce hasn't spent the money we authorized 2 years ago. And foreign availability provisions of foreign policy controls are strengthened by making them comparable to those governing national security export controls. If the President decided the controls were necessary, notwithstanding the presence of foreign availability, then a report is required to Congress detailing the basis and the estimated economic impact of that decision.

I guess the question I have for all of you on that set of proposals is not so much whether you favor them. I assume you all would if they were better than what's in existing law. But to what extent will they make a real difference in trying to constrain the counterproductive use of unilateral export controls for foreign policy purposes? Mr. Chapman, may I begin with you? Do you think they will make a real difference?

Mr. CHAPMAN. Well, I must admit personally I find some hesitancy in putting the more or less total responsibility or authority to determine foreign availability on the supplier, which is in effect what we're saying; that to force the Government in effect to disapprove the supplier's point of view it seems to me to bring some concerns over putting the commercial interest above the Government's interest, where indeed the Government's interest should be paramount. I'm uncomfortable with that, Mr. Chairman.

Senator HEINZ. Mr. McQuade.

Mr. MCQUADE. In the late 1960's this program reported to me while I was Assistant Secretary of Commerce. I was acutely conscious then of how difficult it is for the Government to assemble relevant information. I think that most businesses try, like good Americans, to be honest and informative, but you must also be able to deal with less scrupulous persons, say somebody who wants to ship something to Libya who makes an assertion that it puts the Government official in a semihelpless position without the adequate resources to refute the assertion of the private business.

Senator HEINZ. What would you propose in the alternative? You've been there.

Mr. MCQUADE. It seems to me the way to get at most of the data, frankly, when faced with the question, is that you have to go back and ask other businessmen, or in some cases when it's a specialized product, to ask the defense establishment or CIA, what they can find out about comparability and availability. It's a tough job and I'm afraid that language as strong as you propose might put the Government in an awkward position.

I haven't thought a lot about what exact language would resolve the problem, but I'm cautious about your proposal to be honest.

Senator HEINZ. Let me ask you, if you have the time to give it some thought and let us know, I think these gentlemen are concerned that this may not be strong enough. Mr. O'Keefe, what do you think?

Mr. O'KEEFE. Well, I think I like the language as it is, but I do want to remind you and hopefully get into the record the rapidly changing international situation of the information revolution and the computer revolution which has occurred in just the last 3 or 4 years and one example is an area of export control such as high technology, particularly chips and computers.

Just 3 or 4 years ago we could make in Silicon Valley a microprocessor. Lately these things are moving offshore so rapidly that it's not unusual to have the basic chip made in Silicon Valley or in Tokyo and the subassembly and housing from India and then the whole thing gets put together in Korea under a Sears, Roebuck label—that with the Cad-Cam and all the new devices, most of this technology exists all over the world and that trend is accelerating. It's part of the export of jobs that this technology is being exported. As a matter of fact, I notice Atari just went offshore and I don't know what we're going to do with the Atari Democrat people. We'll have to export them.

Senator HEINZ. There are some people who would view that as a great plus. [Laughter.]

Mr. Downey.

Mr. DOWNEY. I have just three short responses to your question. One, I am in principle not in favor of more reports coming to the Congress, certainly on a quarterly basis. We have a previous record of quarterly reports to Congress in this area, and then the report became semiannual and then annual, and I think they're not cost effective.

Two, I think there will be a great tendency on the part of the President to say that even with foreign availability, even if it exists, there is a great symbolic effort that is required here and so there are overriding concerns. I'm not sure it's going to be effective there.

Finally, I agree completely with Mr. McQuade about the lack of clarity in determining whether it's exactly the same product and so on.

However, as you move to a determination rather than a consideration viewpoint, and if you link that with a form of due process or judicial review and require hearings, maybe you can get the issue on to the table in front of hearings for the record, which will be reviewable in court, and then determine whether the Executive has sufficient evidence on foreign availability.

Senator HEINZ. Yes. I've noted that suggestion which many of you made. It's a very helpful suggestion.

Mr. Giffen or Mr. Neely?

Mr. GIFFEN. Well, I have two comments. I don't think it's all that hard for Government to find out what the true situation is with respect to foreign availability. If it is a problem, the issue is important enough where I think if we provided a little funding to strengthen the Commerce Department in this area it might be worthwhile.

Let me just give you a very basic example. Sanctions or controls were placed on the export of oil field technology and equipment on August 1, 1978, and over the last 5 years the argument has been made that oil field equipment and technology was not available from any other source in the world. However, I think Mr. Neely will point out, that if anybody had bothered to call the Petroleum Equipment Suppliers Association, they could have received information on that question without a great deal of effort.

Armco is one of the largest manufacturers of rigs in the Western World and nobody ever called us from the National Security Council to attempt to find out if rigs were available from another source.

I'm in favor of your section on foreign availability, if we have to have foreign policy controls, but I would like to eliminate lines 14, 15, and 16 "unless the President determines that the absence of export controls under this section will prove detrimental to the foreign policy of the United States". This is the same point that Mr. Downey made. I have a feeling they're going to go right to that provision whenever it's necessary.

Senator HEINZ. I believe one of you made a suggestion—I hope I find it later—that had the effect of compelling the President to find that he had indeed surveyed all the other alternatives available to him for making his either punitive or declarative point. Is that correct?

Mr. GIFFEN. Yes. I made the point that if you use export controls for foreign policy purposes there's really only three purposes you would possibly want to use them for. If you use them for punitive or remedial purposes, they will not work unless we have leverage, and most of us don't see how we're going to have that leverage over the Soviet Union.

If you use them for declarative purposes, a cost/benefit analysis must be performed and somebody must decide whether or not this type of action and activity is proper.

I would submit that perhaps it's time that we begin negotiating with the Soviets instead of making declarative statements with sanctions.

Senator HEINZ. Mr. Downey.

Mr. DOWNEY. Mr. Chairman, I think I spoke somewhat to that point when noting that the present act contains a criterion that you have not continued in your bill, the consequences of not imposing the control. I was urging you to reconsider that by continuing it and broadening it by providing for a determination of what are the consequences of not imposing it, and having that an affirmative determination.

Senator HEINZ. There's no other alternative that would work?

Mr. DOWNEY. No other economic alternative or political alternative or cultural or other symbolic alternative, that there's no other way but landing on this export sector.

Senator HEINZ. I think that's a good suggestion and it's been carefully noted.

Mr. McQuade and Mr. Chapman, you, unlike the other four people, didn't really come out strongly for repeal of most of section 6 as we now know it. Do you favor us retaining section 6 albeit on a far improved basis?

Mr. CHAPMAN. Yes, I think that states the position quite well.

Senator HEINZ. Why?

Mr. CHAPMAN. Because I think it would work if it were done with the kind of safeguards that we have suggested and we think that there should be some provision to permit the Executive Office to take such action if indeed it is truly the best action to be taken. We don't want to remove that, but we want to avoid the excessive and arbitrary use of it. And our suggestion is to tend to try to put that fence around that swimming pool.

Senator HEINZ. Mr. McQuade.

Mr. McQUADE. Mr. Chapman said what I would say.

Senator HEINZ. Very well. So noted.

Now on sanctity of contracts——

Mr. McQUADE. Could I make one other point?

Senator HEINZ. Yes.

Mr. **McQuade**. One of my problems with shifting the balancing of proof is that the proposed language doesn't seem to put much duty on the exporter to do much more than "represent" that there's alternative availability. In considering how you might improve the language, possibly you would want to require that his representations be supported by some reasonably detailed supporting evidence to make it a little more of a burden on him to be persuasive—not to express requirement in a shorthand way.

Senator **Heinz**. I think that's a reasonable suggestion. I gather it wouldn't be much of a problem, judged by the list of some 600 suppliers of oil field equipment that one of our other witnesses had.

Mr. **Neely**. I have an extra copy here.

Senator **Heinz**. If we need it, we'll call.

Mr. **Neely**. OK.

Senator **Heinz**. I apologize. We're about to run out of time. That's 5 bells once again. I would like to just cover two other issues.

SANCTITY OF CONTRACTS

Sanctity of contracts, as far as I know, everybody here believes that we should have a sanctity of contracts clause in the legislation.

Seeing no dissent, so recorded.

The last question is perhaps the most difficult that I have had to address and it's the question of extraterritoriality. Now I don't happen to favor the United States trying to impose its laws on other countries. It has all the bad effects that all of you have stated and then more.

We are coming up from the legislative counsel's office somewhat short of effective suggestions to deal with the problem. The reason is that so far we have found it almost impossible to draft language limiting the extraterritorial reach of U.S. law without totally eliminating that in any situation.

Should we just absolutely proscribe it 100 percent, Mr. Downey?

Mr. **Downey**. Only as a point of information, the section on international law of the American Bar Association is preparing a position on that point. I am sure they will be pleased to get back with you.

Senator **Heinz**. We will await that with great interest.

Gentlemen, I may want to submit some additional questions to you. I thank you for your patience, your excellent testimony, and your very helpful responses to the questions. Thank you very much.

The hearing is adjourned.

[Whereupon, at 12:05 p.m., the hearing was adjourned.]

[Additional material received for the record follows:]

Rand
SANTA MONICA, CA. 90406

CHARLES WOLF, JR.
Director
International Economic Policy
Program

March 14, 1983
CWL: 56

Senator John Heinz, Chairman
Subcommittee on International
Finance and Monetary Policy
United States Senate
Washington DC 20510

Attention: Wayne Abernathy

Dear Senator Heinz:

I appreciate your letter of March 9 and the invitation to testify on March 16 at the hearings on export controls of the Subcommittee on International Finance and Monetary Policy. Due to other commitments as well as the timing of the invitation, I indicated to Mr. Abernathy of your Committee staff, that it would be quite difficult for me to attend. He suggested in our phone conversation that it would be helpful to the Committee if I would write my answers to the specific questions you posed in your letter of March 9. I will try to do this below, and will also add a suggestion which, although it is not directly addressed by the questions in your letter, I hope will be of assistance to the Subcommittee in its future deliberations.

1. "Is there a legitimate role for export controls in our foreign policy, short of war or economic emergency?"

There is a legitimate role for export controls that relates to the imposition of costs on an adversary and the transmission of a signal to him. These can have the calculated effect of deterring future actions of the sort that precipitated the imposition of controls. However, having made this direct answer, I would like to add several qualifications.

While the role of export controls is legitimate in exceptional circumstances, its effectiveness is, in almost all cases, likely to be limited. One reason is that the country, e.g. the Soviet Union, against whom the controls are applied, may find ways of circumventing them by importing from other suppliers. Even if the other suppliers or several of them agree to collective action, the incentives that will be set up within them, or by non-complying countries, to evade or ignore the controls are likely to be strong.

Second, even if a relatively high level of collective compliance is obtained, the country against whom the controls are applied will surely seek various ways of minimizing the effectiveness of the controls, e.g., by finding substitutes within its own production capabilities, or among non-embargoed items of external supply, or by economizing on the use of the controlled export. Of course, in these cases, costs will be incurred by the process of adjustment, which confirms the purpose and role of invoking the controls in the first place. At the same time, this puts a serious limit on how large the resulting cost imposition turns out to be.

Third, combining the export controls together with controls on imports from the offending countries (as your new bill, S-397, to amend the Export Administration Act of 1979, would accomplish) will obviously add to the costs that are imposed and hence reinforce the legitimate role for export controls as an instrument of foreign policy.

2. "Do the benefits from the use of export controls outweigh the costs imposed on the economy?"

It is particularly hard to answer this question because the benefits obtained from the use of export controls are likely to be reckoned in terms of the foreign policy goals that are the object of imposing costs and conveying signals to the adversary, whereas the costs imposed on the U.S. economy are calculated in a different coin, namely sales forgone or diminution of revenues, profits, and employment as a result of shifting from the country of destination to other importers or to domestic sales within the U.S. Incidentally, it's worth observing that the costs imposed on the U.S. economy should not be viewed in "all or nothing" terms. Typically, there will be other uses for the resources that are not exported, whether in terms of producing for other export markets, or for producing to meet the demands of the domestic market. While shifting to these alternatives will, of course, impose costs on the U.S. economy, they should not be viewed as the full costs of the forgone exports.

3. "Should the President be given wide discretion for the use of export controls for foreign policy purposes? To what extent should the Congress be involved?"

In this as in other matters relating to foreign policy, it is one matter for the Congress to legislate, and a different matter for the chief executive to execute and implement. Similarly, I believe in this case the President should have considerable discretion to use export controls in the exceptional circumstances and for the limited cost-imposing and signalling purposes that I alluded to above. The involvement of Congress should be to try, as you do in S-397, to provide criteria that the President should take into account in the circumstances where he considers invoking export controls.

4. "Is there any role for unilateral export controls, or are any such attempts doomed to failure?"

As indicated above, unilateral export controls are likely to be less effective in imposing costs on the adversary than multilateral controls. The greater the extent to which the U.S. has a monopoly of a particular product, obviously the greater will be the role and effectiveness of unilateral controls. Substitutes that may be imported from non-concurring third countries won't be available. The costs imposed on an adversary from the control of exports of reasonably homogeneous products, such as wheat, will be quite limited to the extent that the U.S. exports are shipped to other parts of the interconnected world market. Nevertheless, even in this case, there will still be some transitional costs for the adversary country in shifting to "second best" points of origin.

> 5. "Are the recent controls on participation in the construction of the trans-Siberian pipeline an example of the abuse of foreign policy controls by the President? If so, how so, and what can be done to prevent a recurrence? If not, why not?"

I think that the imposition of controls on the G.E. compressors for the Yamal pipeline was not handled adroitly or effectively. However, it does not seem to me that the controls represented in any sense "an abuse" of the proper responsibilities of the President for the conduct of foreign policy. I would say that the way the matter was handled was something of a mistake, or at least that better results than those which ensued might have been obtained from imposing the controls. Yet this certainly did not, in my judgment, represent an "abuse" of Presidential authority. The agreements that G.E. had with its subsidiaries and licensees abroad clearly spelled out the circumstances in which the licenses could be suspended by intervention of the President. It does not seem to me that there is any legitimate complaint about "extra-territoriality" in this case because the licensees knew full well the terms of these license agreements when they entered into them. To explain more fully why I think that, nonetheless, the imposition of the embargo on the G.E. compressors was not handled with skill and adroitness, would, I'm afraid, take me into too many details that are not of central relevance to responding to your question.

Let me conclude with one suggestion that I alluded to at the outset. While I realize that these hearings are concerned explicitly with the Export Administration Act which expires in 1983, there is a related issue which I think would be worth the Subcommittee's consideration. This issue concerns the other side of the coin, namely the subsidization of exports which pervades the U.S. economy, and to an even greater extent the economies of our allies in Western Europe and Japan. These subsidies take many forms, for example, preferred interest rates on credit extended to exporters or to foreign borrowers to finance their imports, government underwriting of export credit insurance and loan guarantees, preferential tax treatment of income derived from foreign sales, etc. All of these forms of subsidy reflect the legacy of neo-mercantilism with which exports in particular and trade in general are viewed among the public, in the media, and often in the Congress. According to these conventional views, more trade is always better than less trade, and exports are "better" than imports. In fact, where there exists a network of trade subsidization through the sorts of financial means that I mentioned above, neither of these conventionally-accepted propositions is correct. Instead, under these circumstances more trade is worse than less trade, and certainly exports are not "better" than imports. Rather, in both cases the result is an extra cost burden imposed on the efficient functioning of the economy as a whole, as well as an incremental burden on the taxpaying public.

I think it would be informative and useful for legislative scrutiny of this pervasize network of subsidization if the Subcommittee on International Finance and Monetary Policy were to conduct a series of hearings to identify the scope and impact of these subsidies, the costs they impose on the American economy, and the desirability and feasibility of reducing or eliminating them, unilaterally by the U.S. and preferably in concert with our Allies.

I hope these answers to your questions, and my concluding suggestion will be of use to the Subcommittee.

Sincerely,

Charles Wolf, Jr.

CW:js

CRL
LAUREL INDUSTRIES

280 LAUREL AVENUE · HIGHLAND PARK, ILLINOIS 60035 · USA
TELEPHONE 312 · 432-8204
TELEX: 720457 HLPK

February 11, 1983

The Honorable Jake Garn
5207 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Sir:

Considering the millions of jobs lost because of export regulations, I believe it is time to disband our export control of commercial products. We should rid ourselves of these controls which came into being over thirty years ago as a temporary measure, but which continue to this day inflicting harsh tolls on the American economy.

President Reagan has spoken many times of the need for eliminating many bureaucratic regulations. All too often businessmen find them redundant, burdensome and repressive. The President also stresses the need for our preserving the concept of reliability on the part of the American producer. Our export regulations, however, are proving to be obstacles and are counterproductive to the needs and aims of business and labor. Current Export Administration practices, in effect, enact denial by delaying tactics. The time required to obtain U.S. export license approval is longer than for any other major country. These long delays for our products result in serious creditability and competitive problems. Our government, by citing foreign policy objectives, attempts to justify export controls. It turns export controls on and off apparently at will. No business can survive, much less prosper, if exports are encouraged one day and embargoed another. Rather than placing an embargo on products of American industry and agriculture, we should remove all export control on commercial items, but carefully control, internally as well as externally, all military products.

The enclosed is a compilation of my views, much of which was presented before the Subcommittee of the President's Export Council. I ask you to support the view that export regulations should be limited to only military items and that such items be controlled within the U.S. as well as outside. With the extra taxes that can be realized by recovery of jobs lost because of export regulations, we can aim at improving our defense posture and reducing our national debt. Your opinion in these regards will be most helpful and I respectfully invite your views and comments.

Very truly yours,
CRL/LAUREL INDUSTRIES

Carl Lambrecht

CARL LAMBRECHT
General Manager

CRL
LAUREL INDUSTRIES

280 LAUREL AVENUE · HIGHLAND PARK, ILLINOIS 60035 · USA
TELEPHONE 312 · 432-8204
TELEX: 720457 HLPK

Considering the millions of jobs lost because of export regulations, I believe it is time to disband our export control of commercial products. We should rid ourselves of these controls which came into being over thirty years ago, as a temporary measure, but which continue to this day inflicting harsh tolls on the American economy. In my view, the Export Administration Act, has done nothing to improve American technical superiority. In fact, it has strengthened the military position of all Warsaw Pact countries, and in particular, the Soviet Union. If Germany had put an embargo on the United States in 1912, we would have been more effective in fighting in the First World War. The American clothing industry, for example, did not have clothes-dyeing technology comparable to the German's, as every American woman recognized. Certain critical industries, such as optical glass, did not exist in the United States and our fighting capability was thus hampered. If the Germans had helped us in 1912 to identify our military deficiencies, much as we are helping the Warsaw Pact countries now, our entire military machine would have been better prepared. Today, computers supplied by Sperry-Univac to Poland are experiencing breakdowns and faulty output, while the same type of units in the Soviet Union are running properly. Apparently the Soviets have money to pay for spare parts and ways to obtain them without export licenses.

On the one hand to deny export licenses for modified turkey thermometers and on the other hand to organize a technical sales symposium within the Warsaw Pact countries in late 1981, suggesting the sale of triggers for atomic bombs to these same countries shows diametrically opposed intent. Examples like these abound. Isn't it strange that Italy should sell Leopard tanks to Libya, and then that country in turn, ship a portion of this military materiel to the Soviet Union? We have placed an embargo on pots and pans to Libya. Yet, having full knowledge of the transaction, we stand by, while Turkey, using U.S. technology and equipment, sells munitions to Libya. I simply do not understand the rationale. It appears that the only reason for export controls is to allow a bureaucracy to harrass businessmen much in the same manner that their counterparts in the Warsaw Pact countries employ. And like our Warsaw Pact counterparts, even the rights of due process of law is denied. The United States Government exports some of its highest technological products via military transport containing technology having significant military application of the latest versions of night vision technology. Even to some friendly countries we deny the sale of this high technology and at the same time we give it away to the Soviet Union with explicit instruction for maintenance, repair and even for reproduction of the technology.

The most threatened trade areas are high-technology and agriculture. These are the two areas of U.S. competitive advantage and are our greatest export success. We see farms being liquidated due to bankruptcy while grain crops are rotting in graineries and in barges lying idle on the Mississippi River. High-technology firms are cutting salaries and laying off employees. A company selling motors for lawnmowers has lost a large part of its exports. There have been numerous cases in which after much deliberation and many community meetings some authorities have decided on the basis of national security to deny licenses. This, despite the fact that the same kind of products have been delivered a year earlier from Japan. It is difficult to understand how our government bureaucracy can be respected in view of the fact that it is the major supplier of military technology to Warsaw Pact countries. And all of this, free of charge . . . at United States tax payer's expense. The technical capabilities of the individuals involved in administrating these decisions are not equal to the demands required due to the significance of the products under control. The government experts, and in fact, the whole process appears to be essentially self defeating. It appears that often the strength of the technical capabilities of these individuals is limited to the awareness of certain key or "buzz" words. As an example, companies have been granted a license for a parametric oscillator and later when the same item is again requested, but at that time described as an infrared laser, it is denied. The implication is that highly scientific items should be permitted since they promote fundamental research, but when sounding military in nature should not be permitted.

The reason for these controls clearly is to minimize the military strength of the Soviet Union which is basically the richest country of the world. It produces more oil than Saudia Arabia, its gold mining production is the second largest in the world, and it has untold resources of titanium, iron, etc. On the other hand, the Soviets are graduating more scientists and engineers every year and based on the open publications coming from the Soviet Union, it is obvious that they are technically on par with the United States. The Soviet's biggest problem is their internal bureaucracy permeating everywhere and dramatically slowing down the effectiveness of their technology. The resultant is that most of their scientists are devoted to the poetry of research. A good example is a scientist who until two years ago was doing cosmic research studying the planets and universe. There could not be a more fundamental research. Today, that same scientist is engaged in laser applications. It seems evident that if this trend continues, the Soviet technological base will assume a much broader applications orientation.

Today's technologies are growing at such a rapid rate that most scientific instruments and industrial equipment require computers and data processors to be operated efficiently. When applications for export licenses are submitted for such computer equipment for delivery to the Warsaw Pact countries many times the licenses are denied. At the same time when equipment requiring such computer accessories is delivered to Brasil, that government makes mandatory the use of Brasilian-made computers. Because the Brasilian government is reluctant to import computers and is determined to utilize Brasilian-made items these will ultimately be associated with U.S. made equipment. Obviously, this is not in the best interest of our economy. It is parallel to the U.S. bureaucracy restricting sales of the same type of computer to Eastern Europe with the same economic effect . . . it hurts the U.S. not the Soviet Union. Currently, and in fact, the Brasilians presently are about to launch a large undertaking in the computer industry. Originally, U.S. technology had been considered but because of the many bureaucratic controls put on them from the U.S. administration it has now been decided to use a technology based upon an European computer. It has been said by some experts that this European technology is at a level comparable to that of the U.S. and much more attractive because of the lack of bureaucratic control. It is a known fact that many years ago when the U.S. had a decisive military edge in South America our bureaucracy controlled the purchases from the U.S. Now many of these countries have developed their own military technology and become much more independent. Brasil, in fact, has given license to an American company for military technology. While the countries of the world are developing, American industry is becoming more and more hamstrung by our own bureaucracy and is losing more and more business and gaining less in technology. President Reagan recognizes that competition from this additional base of military products located outside of the U.S. provides a means for countries who have been denied licenses because of the U.S.'s embargoes to easily make these purchases. For example . . . from Brasil to Libya. Our harsh bureaucratic control of even commercial products will do nothing more than to speed the rate of deterioration of markets for U.S. made goods.

It will not be long before it will be easy for the Soviets to compete with the United States as demonstrated by a report in one of the military journals which I recently read indicating that our bureaucracy is so ineffective that we are lagging behind. By the time they are completely approved, the components of many of our foremost electronic designs and military products are obsolete. It appears that due to the high potential offered by commercial applications, the genius of our military electronics continues to lag behind and be straddled by a lack of committment.

We all are totally cognizant of the objective of the current administration and we are fully aware that new responsibilities have been placed upon the various governmental agencies in effort to carry out these objectives. However, with these added responsibilities and growing volumes of work, while at the same time most probably understaffed, it is entirely possible that many agencies are creating mistakes and errors. Most often mistakes can be corrected through legal channels, or even simply through the medium of public opinion. Those who feel that their rights have been violated have some legal redress to the situation.

However, options open to a company which considers its right to do business to be hampered and possibly violated by actions of the Department of Commerce, are minimal indeed. Violations can take several forms, such as a denial of a license to one exporter while granting to a competitor a license to sell the same product to the same customer or enduser. In other cases, the Department of Commerce can put a product under export control and completely disregard the export regulations even though the regulations explicitly exclude the product from control. Often it could take years to complete an appeal for a denied license. The Department of Commerce could also levy civil penalties for alleged violations of export laws and in the final analysis "blacklist" the exporter and deny all exporting priviledges. American export firms are caused to spend inordinate amounts of time and money (even to the point of near bankruptcy) in their effort to comply with the regulations.

Perhaps the number of these cases are infinitesimal when viewed in the light of the extremely large volume of export applications each year, but when errors in judgement occur, the options open to an appealant under the current Export Administration Act is limited to the administrative appeal to the undersecretary for trade administration. Although export administration regulations allow an exporter to request an informal hearing, the assistant secretary has the authority to either grant or deny such a request. Further, the regulations state that "decisions of the assistant secretary shall be final" and so that exporter might be denied the right to conduct business without due process of law or even without a proper hearing. In actual practice, and in our experience, the administrative appeal process is as likely to reinforce the original error as to correct it. The appeal process often relies on the opinions of the very same people who made the original decision. Human nature does not easily recognize or admit to mistakes and often is reluctant to reconsider options. Moreover, the denial of the appeal under the present regulations does not have to be justified or argued by the Department of Commerce. Although the Export Administration Regulations require that the decision "be issued to the appealant in writing and shall contain a statement of the reasons for the action," such a statement usually consists of the phrase "for national security" even when the exporter argues that such is not the case. In the final analysis, we believe that the regulations should be amended to allow the exporter, who disagrees with the action of the Department of Commerce, to appeal to judicial authorities. This is particularly so in those cases where the financial well-being of the company is at stake.

President Reagan has spoken many times of the need for eliminating many bureaucratic regulations. All too often businesmen find them redundant, burdensome and repressive. The President also stresses the need for our preserving the concept of reliability on the part of the American producer. Our export regulations, however, are proving to be obstacles and are counterproductive to the needs and aims of business and labor. Current Export Administration practices, in effect, enact denial by delaying tactics. The time required to obtain U.S. export license approval is longer than for any other major country. These long delays for our products result in serious creditability and competitive problems. Our government, by citing foreign policy objectives, attempts to justify export controls. It turns export controls on and off apparently at will. No business can survive, much less prosper, if exports are encouraged one day and embargoed another.

Rather than placing an embargo on products of American industry and agriculture, we should remove all export control on commercial items. We should have, and I strongly advocate, a tightening of controls on all military technology and production. We should carefully control such disciplines internally as well as externally. We must limit, if not prevent, a dissemination of military information to Eastern Europe. By working in close cooperation with our allies, we should be able to maintain a consistancy of policy regarding military developments and greatly retard the flow of military information and equipment to the wrong place. In this cooperation, we must present a truly united front. I am convinced that with the extra taxes that can be realized by the recovery of jobs lost because of export regulations, we can better aim at improving our defense posture and reducing our national debt.

CARL LAMBRECHT
General Manager
CRL/LAUREL INDUSTRIES
December 2, 1982

United States Council for International Business

DAVID L. GROVE, President

Serving American Business as U.S. Affiliate of:

The International Chamber of Commerce
The International Organisation of Employers
The Business and Industry Advisory Committee to the OECD
The ATA Carnet System

The United States Council for International Business is a spokesman for some 250 U.S.-based corporations on issues affecting international trade and investment. The Council represents most of the major U.S. exporters, as well as smaller firms whose performance in the international market is increasingly important to the strength of the U.S. economy.

The Council has had a long-term interest in export control policy and has been closely following the recent debate attending the imposition of controls on equipment for the Yamal pipeline. Council views on that policy were presented to the Senate Foreign Relations Subcommittee on International Economic Policy last July 30th.

The Council wishes to emphasize the wide degree of serious concern in the business community about major failings in the foreign policy export control provisions of the Export Administration Act of 1979. This is not to say that other sections of the Act are unimportant or without need of modification. National security, short-supply, administrative and anti-boycott provisions are all important elements of the Act which require careful review. But if there is one urgent problem that has first priority in the business community, it is the need to revise the foreign policy export control provisions.

I. Foreign Policy Controls Do Not Achieve Foreign Policy Objectives

Foreign policy controls fall under the general category of economic sanctions imposed for non-economic policy objectives. The history of attempts to influence major national policies by means of economic sanctions, imposed either collectively or individually, is a history of failure. The British could not intimidate the American colonies with economic sanctions. U.N. sanctions barring oil shipments to Rhodesia did not influence the final outcome of that conflict. The most successful application of economic sanctions, by the OPEC oil cartel in October, 1973, has produced effects that are largely economic. It has induced more serious attention to Arab policies and politics on the part of the industrialized countries, but it has not weakened U.S. support for the state of Israel. In short, the burden of proof lies on those who wish to demonstrate that economic sanctions can persuade other nations to change important national policies.

The most relevant examples for Congressional review are the recent attempts to use foreign policy controls by both Democratic and Republican administrations. The Carter Administration's foreign policy controls, which were multisectoral and included some high technology exports and grain sales, failed to bring any change in the Soviet Union's behavior in Afghanistan or elsewhere. Similarly, the Reagan foreign policy export controls involving pipeline equipment failed to produce any measurable effect regarding Soviet policies in Poland; this was the declared policy objective. Nor has there been any tangible progress toward an undeclared objective, to force a NATO consensus on economic transactions with the Soviet Union.

Not only are these recent failures demonstrable, they were predictable. All economic sanctions fail largely because of three characteristics. First, and most important, there is an almost immutable hierachy of national priorities such that no nation can afford to subjugate its policies to economic pressures and hope to survive long as a nation. Economic pressures have virtually no leverage on high-priority national policies, especially military and foreign policies related to a nation's security. The second reason for the predictable failure of foreign policy controls is that in today's global economic environment it is the rare case when one country maintains exclusive control over a certain technology, or when a substitute cannot be found in its stead. Even when controls are applied collectively, the target country is usually able to find alternative sources or otherwise make domestic adjustments. The chief examples are the Carter controls on grain exports to the USSR and the Reagan pipeline sanctions. In view of divergent national priorities and dependencies on trade, it is patently difficult to get even our allies to support foreign policy controls. Foreign policy controls almost never achieve their goal of denying the product to the targeted country in a way that modifies the behavior of that country. At best they might cause some modest adjustments.

The third reason for failure is that economic sanctions inevitably bring economic costs to implementers. These costs in turn induce political pressures that lead to the removal of controls. The recent pipeline debacle illustrates how unilaterally imposed sanctions can exact enourmous tolls on relations between friendly states. It is unusual for democracies to maintain export policy controls for any great length of time as political pressures are set in motion that lead to their removal.

The combined effect of these three factors, particularly the first, is that foreign policy export controls have only one practical effect: they send a signal. Such foreign policy instruments are not without value, particularly for a democratic society concerned about human rights, and for a nation that is the western leader against Soviet totalitarianism. The problem is that these instruments have been oversold as more than gestures, and there has not been enough attention to the wide range of symbolic alternatives which might include: downgrading diplomatic contacts, public chastisement, reductions in foreign aid, or selected cases of non-cooperation.

II. The Costs of Export Control Symbolism

Foreign policy export controls have short-term economic costs, usually in specific sectors; and these can be quantified to a reasonable degree. For example, the value of lost contracts in grain sales caused by the Carter response to Afghanistan is generally estimated at $2.4 billion. Another example is Caterpillar, who prior to 1979 supplied 85% of the Soviet market for pipe-laying machines. After the U.S. unilaterally banned the sale of pipe-layers to Russia, Komatsu of Japan took over 85% of the Soviet business. Caterpillar lost an estimated $400 million of additional export sales, plus $100 million for replacement parts. It cost some 15,000 man-years of employment.

Armco Steel was cut out of $100 million of exports when President Carter suspended licenses for export of a steel mill to Russia. Creusot Loire of France picked up Armco's share of a joint project with Nippon Steel. Armco had spent $6.5 million in negotiating expenses, now unrecoverable, and figured to get additional orders of $20-$30 million in spare parts orders, and to participate in the next phase of the plant development.

A U.S. aerospace company estimates it lost $1 billion of orders in the Middle East because of U.S. foreign policy controls. Its customers no longer feel confident the company can guarantee delivery.

Preliminary results taken from a survey being conducted by the National Association of Manufacturers show ten companies alone estimating that foreign policy controls cost them $1.5 billion of business since 1979.

The total cost of foreign policy controls is hard to measure. For example, U.S. companies not long ago had a nearly insurmountable technological advantage in oil field equipment. It was just too expensive for competitors to try to break into a market dominated by the U.S. industry. Then export controls blocked U.S. firms out of some markets, providing competitors with the opportunity to build up economies of scale and to test their own technology.

It is more difficult to estimate the secondary effects of lost sales in terms of impact on suppliers, shippers, and other related services. In practice these short-term costs are not sufficiently concentrated so that they are spread out among a few groups. Such secondary costs tend to drop out of the political arena and policy evaluation.

There are also long-term cost, for the industry or sector and for the economy as a whole. These are largely unquantifiable because one cannot convincingly estimate the future value of lost markets, or of unfavorable climates for U.S. investment abroad and resulting lost investment returns, or of an erosion of technological competitiveness because of diminished joint venture possibilities and license swaps. It seems clear however, that there is erosion of competitive edge because foreign competitors find more stimulus for research and development. Ultimately these effects become long-term costs for the U.S. economy. In terms of lost business, tax revenues, jobs and competitiveness, these costs can be far greater than the more obvious short-term costs of export controls. It is evident that these kinds of long-term costs are greater for the U.S. economy today than ever before, and likely to become even more onerous as global economic interdependence grows.

There are two additional factors that militate against a serious attempt to weigh economic costs in the policy process. The first is the hierachy of national priorities referred to above. A sovereign nation, a President and a Congress will always perceive that foreign policy and national interests outweigh a limited economic loss. The thought is that such costs are often unavoidable; to give too much weight to these would be to abdicate responsibility for foreign policy. The business community realizes economic costs are sometimes necessitated by higher foreign policy priorities. However, in practice the hierachy of national priorities causes economic cost consideration to be systematically overridden--this is the history. Symbolic export control gestures are repeatedly made with enormous economic costs.

A corollary factor is that effective foreign policy must be flexible and capable of quick response. This means that policymakers will try to avoid lengthy cost evaluations or view such processes as de facto constraints on foreign policy. These are demonstrable behavior patterns which are not likely to change and should be considered in revision of the statute.

III. Foreign Policy Controls Undermine Effective Foreign Policy

There are some legitimate questions about whether this kind of authority actually promotes sound foreign policy. First, it is evident from the historical pattern that foreign policy export controls are almost always lifted before foreign policy objectives are realized. This is because they are ineffective, costly to implementers and in practice can have little effect on the target country. In foreign policy terms the practical result is an inevitable flip flop of symbolic posture without attainment of policy objective. The flip flop in the grain sales policy to the Soviet Union since the Afghanistan sanctions and the zig-zag of pipeline export control signals between June and November 1982 are the major recent exhibits. Export control authority seems to guarantee contradictory signals which are counterproductive to sound foreign policy. They may be even more profoundly dangerous as the inevitable lifting of controls without results tends to signal acquiescence and weakness.

Second, national economic well being and the economic strength of the western alliance is a fundamental long-term element of national security. National economic security has been slighted in comparison to the attention given to military security. It is an essential and inseparable aspect of military security. Not only do the economic costs of export policy control undermine U.S. economic strength but, more significantly, such measures which are implemented without the cooperation of our allies can undermine the very fabric of western economic security and, ultimately, military security. The impact of the pipeline sanctions on the western alliance is well known. Trade policies which are normally more mundane matters in national priorities became a wedge that opened fissures in the western alliance, pitting nation against nation in a no-win confrontation which the Russians would have quickly invented if it lay within their power to do so. This problem resulted from the extraterritorial provisions of the Export Administration Act. No one doubts that the maintenance of an economically sound western alliance is a stronger policy instrument than any short-lived symbolic gesture. A statute that permits such perversion of priorities clearly needs some revision. Changes to correct this problem are more important than the obvious need to limit the damage this authority does to the U.S. economy.

IV. Policy Recommendations

The economic costs and diplomatic futility of foreign policy export controls have long been know to the Congress. Indeed, in 1979 it was the expressed purpose of Congress to revise the Act to mitigate the negative impact of foreign policy controls. Two administrations of opposite political complexions have demonstrated that the 1979 revision is ineffective to this purpose. Now there is more evidence that this authority has negative consequences for foreign policy.

There are no simple legislative solutions. But one imperative is clear, revision of the statute must explicitly circumscribe Presidential discretion because the very properties that render foreign policy controls ineffective insure that administrations will again resort to these controls without sufficient regard to economic costs: paradoxically, the higher priority of foreign policy which insures that nations will not submit to economic pressures also insures that Presidents will tend to discount the economic costs of such policies.

One approach would be to limit authority to cases where the U.S. has the cooperation of other major suppliers, and also in cases fulfilling international obligations.

Another approach would be to proscribe foreign policy controls directed against the Soviet Union or the East Bloc which did not have the support of our NATO allies.

Still another possibility would be to insure the sanctity of existing commercial contracts.

Finally, whatever the approach, the foreign policy extraterritorial provisions should be repealed. These are unworkable and harmful to sound foreign policy.

THE WILLIAMS COMPANIES
ONE WILLIAMS CENTER – TULSA, OKLAHOMA 74172

JOSEPH H. WILLIAMS
CHAIRMAN OF THE BOARD
AND CHIEF EXECUTIVE OFFICER

March 21, 1983

The Honorable H. John Heinz
Chairman, Subcommittee on International
Finance and Monetary Policy
Committee on Banking, Housing and Urban Affairs
Washington, DC 20510

Dear Mr. Chairman:

I appreciate this opportunity to comment on S.397, "The Export Administration Act Amendments of 1983." I applaud your efforts to promote U. S. exports and to assure the reputation of U. S. exporters as reliable suppliers. I am pleased to wholeheartedly endorse the bill in its present form and very much look forward to its enactment.

Specifically, the provisions of the bill that strengthen and expand upon the foreign availability criteria of current law are most important if this nation is to be seen as a credible trading partner and a reliable supplier. As one of the United States' principal exporters of phosphate rock and phosphatic and nitrogenous fertilizers, our Agrico Chemical Company subsidiary has experienced on several occasions trade embargoes and foreign policy export controls which have either significantly impacted the fertilizer industry as a whole or prevented it from entering into export transactions that could otherwise have been made. In most, if not all of these occasions, the embargoed products or substitutes for them, were otherwise available in the world market.

The experience of the U. S. fertilizer industry demonstrates both the soundness of the provisions of the bill that require cutoffs of imports from countries where our foreign policy export controls apply and the problems frequently inherent in the export controls when the product is otherwise available in the world market. Shortly after the previous Administration imposed the grain embargo against the Soviet Union in response to the invasion of Afghanistan, it also embargoed exports to the Soviets of U. S. origin phosphate rock and phosphatic fertilizers. This phosphate embargo was aimed essentially at the export of super phosphoric acid (SPA) to the Soviets, the subject of a countertrade deal between Occidental Chemical Corp. and the Soviets. While the SPA exports were embargoed, the other half of the countertrade, imports of Soviet anhydrous ammonia, were unrestricted.

The U. S. fertilizer industry was doubly impacted as a result of this interruption of only one side of the countertrade. With the loss of the single market for which Occidental had dedicated the overwhelming majority of production from its plant, tremendous quantities of phosphoric acid were backed into the domestic market. The result of the phosphate and grain embargoes was the beginning of a depression in the U. S. phosphate industry that continues today, with some 26% unemployment and a 30% reduction in mining. While the entire depressed state of the U. S. phosphate industry cannot be attributed to the phosphate and grain embargoes, it is fair to state that the industry would be in far healthier shape today had there not been an embargo. The Soviets were still able to obtain other phosphate supplies, although always not SPA, in the world market when their U. S. supply line was cut.

The failure to embargo ammonia imports from the Soviet Union continued to injure the U. S. industry and allowed the Soviets to earn needed foreign exchange, which may have been used to purchase phosphate supplies in the world market. Had the provisions of Section 6 of your bill then been in existence, a far more balanced approach would have been taken and would have lessened the impact on the U. S. fertilizer industry. We look forward, therefore, to its prompt consideration in Congress and would be pleased to assist your efforts in any way that we can.

Sincerely,

Joseph H. Williams

JHW:mmg

xc: D. W. Calvert
V. T. Jones
C. J. Head
B. N. Roth

REAUTHORIZATION OF THE EXPORT ADMINISTRATION ACT

THURSDAY, APRIL 14, 1983

U.S. SENATE, COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS, SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY,
Washington, D.C.

The subcommittee met at 9:30 a.m. in room 538, of the Dirksen Senate Office Building, Senator John Heinz (chairman of the subcommittee) presiding.

Present: Senators Heinz, Garn, Mattingly, Proxmire, and Lautenberg.

OPENING STATEMENT OF SENATOR HEINZ

Senator HEINZ. The Subcommittee on International Finance and Monetary Policy will come to order.

This is the fourth in a series of committee hearings on the renewal of the Export Administration Act. The first focused primarily on Senator Garn's bill, S. 434, to create an Office of Strategic Trade. The second continued the emphasis on strategic issues by reviewing our national security export control program. In the third we heard private witnesses discuss the foreign policy controls contained in the act.

Because the administration was unable to send up its bill in time for our March 16 hearing, today's hearing will be divided into two parts. During the first part we are going to hear the administration's presentation of its case for their suggested amendments to the Export Administration Act, with particular emphasis on foreign policy controls. In the second part, we will shift the focus to the short supply and enforcement sections of the act to hear some private sector witnesses on these issues.

Much of the focus and concern of the exporting community during the past few years has been with regard to the use of foreign policy controls. This concern has been heightened by the most recent use of foreign policy controls, namely those imposed in an effort to block the construction of the Yamal pipeline for natural gas from the Soviet Union to Western Europe.

While I believe that most members of the committee would certainly have preferred that the pipeline not be built and indeed supported the administration's efforts to persuade our European allies not to proceed with it, I also believe that there's little doubt here that the controls actually imposed became an economic and foreign policy disaster. We have not stopped the pipeline. By insisting on extraterritorial extension of our law, we have created serious frictions with our allies. We have denied American companies the economic benefits of participation in the project, and we have cast serious doubt about our reliability and credibility as export suppliers.

How can we expect our businesses to sell abroad if neither they nor their buyers know from day to day whether our Government will permit them to sell?

I would be the first to maintain the the President needs authority to impose controls for foreign policy reasons and I would agree that there are times when there's a foreign policy message that we must send with the imposed controls and that it is sometimes important enough for us to send that message and suffer the resultant economic cost to our manufacturers.

Unfortunately, both this administration and to an even greater degree its predecessors, especially with the grain embargo, failed to estimate and weigh the benefit and costs of their actions. As a result, we've had policies premised exclusively on the supposed benefits while our economy was left to suffer the actual costs and, even worse, these costs are not just short-term losses in jobs and sales; they certainly are that; but they are also permanent shifts in export markets away from U.S. producers to other sources of supply.

The main problem for this committee will be to find a way to maintain the President's authority to impose foreign policy controls, but to do it in a manner that insures the controls will accomplish their purpose and that proper analysis with full private sector involvement has indeed been done.

The bill I introduced earlier attempts to strike that compromise, first, by elevating the list of conditions the President must consider to a set of determinations he must make in a report to the Congress prior to imposing controls; second, by strengthening the foreign availability provisions of section 6 and; third, by providing that any controls imposed will not apply to existing contracts but will be prospective. I will be most interested in the administration's comments on this approach.

In my judgment, the administration's bill does not deal with these issues adequately. Particularly disappointing to me is the provision dealing with the sanctity of contracts. While it grants the sanctity of contracts to those explicitly providing for shipment in 270 days, it also allows the President to override that sanctity if he determines that such export would prove detrimental to the overriding national interest of the United States.

In view of the fact that foreign policy controls are to be applied only in cases when the President believes the overriding national interest is at stake, the administration proposal is hardly a step forward and, if I might say so, reminds me of the kind of proposal we might have gotten from the Carter administration where the way to solve the problem was to square it and then divide it by two, coming back with a confusing denominator that simply provided no policy guidance and made everybody kind of frustrated and confused and was often counterproductive.

It strikes me, in other words, that the administration has attempted unsuccessfully to deal with the problem. They have married two opposites and have left us exactly where we are.

I hope our administration witnesses today will comment on these kinds of questions, and also on the central dilemma which we really do need to solve constructively of how to guide the President's authority without excessively constraining it.

Senator Garn, the chairman of the full committee, is here and before I turn to the ranking member I'd like to turn to Senator Garn for any statement or comments he has.

OPENING STATEMENT OF SENATOR GARN

Senator **Garn**. Well, thank you. I do appreciate that. I've got a conflict with the other hat that Senator Proxmire used to wear too, as chairman of the HUD Appropriations Subcommittee which I've got to go chair in a short time.

Mr. Chairman, I certainly want to congratulate you once again for holding this series of hearings on the Export Administration Act. I find it very useful to have had the opinions of American businessmen so amply presented on the whole range of issues involved. Not including today, at least 11 different trade and business organizations have testified before the subcommittee on this issue. That certainly is a laudable achievement. We should remember, however, that there are many additional concerns and viewpoints as well that must be incorporated into any action that the Congress ultimately takes.

I join you in welcoming Deputy Secretary Kenneth Dam and Under Secretary Lionel Olmer to present the administration bill, S. 979. I welcome the administration bill at long last. It addresses many issues and deserves close consideration. Already I find several provisions that I applaud. In fact, what I find disappointing is not what is in the bill but what is not there.

Most significantly, the bill takes no steps whatsoever to solve the bureaucratic and administrative problems that have debilitated our export control efforts and which will continue to debilitate them until the problems are solved. I recognize that the bill is the result of compromise among the various Government agencies, and no doubt that explains the lack of any steps toward appropriate reorganization.

This bill has done little to persuade me, however, that the creation of an Office of Strategic Trade is unnecessary. Instead, the absence of any official Government spokesman for our export administration interests has become all too apparent. There is little consensus on export control in this administration, nor is there likely to be much in any administration as long as our system is bureaucratically deemphasized and top policy is made on an ad hoc basis by individuals, not one of which has a day-to-day single purpose responsibility for and experience in export administration. I know that Larry Brady tries his best to make the system work, when he is not dividing his time with his import control responsibilities and his many other duties. Just a few weeks ago, he was here testifying on the Defense Production Act.

Senators Proxmire, Tower, Armstrong, Mattingly, Trible, and myself on this committee, and other of our colleagues in this body put forth a very reasonable and moderate proposal in S. 434. I am sure that they all feel as strongly as I do that export administration is a high national concern and deserves more priority than it is currently given in our governmental structure. Witness after witness before this subcommittee, Mr. Chairman, has indicated how important export administration is.

I do not think that it is unreasonable to take export administration out of the bureaucratic back room and place it in a highly visible Federal agency.

I also do not think that it is unreasonable to end the conflict of interest involved with having export administration in our trade promotion agency. We would not think of placing the Federal Trade Commission, or the Consumer Product Safety Commission, or any other of our high priority regulatory operations in the Commerce Department. That would be bad government. Bad government, though, is what we currently have with our export administration system. It is better, I will grant, than it used to be, but it is still not good. And I wonder whether the improvements that have been made will survive Lionel Olmer, Larry Brady, and Ted Wu.

I believe that with an effective agency in place, such as the OST, which gives a clear and high priority to export administration and which marshalls our best governmental resources, we will be able to focus our export control efforts on the relatively few items that are of a critical nature. At the same time, we will be able to calm the fears that we are trading to our adversaries our technology in exchange for greater insecurity. We will then be able to expand trade with the Soviet bloc and other countries, being assured that the items of such trade will be mutually beneficial.

Again, I am disappointed that the interadministration negotiations did not result in an administration bill to establish an OST, a proposal submitted by 18 members of the Senate, many of whom are the staunchest supporters of this administration. There is an even wider support for removing criminal enforcement from the Commerce Department, which we all must agree was never designed to be a law enforcement agency. That proposal, too, Mr. Chairman, seems to have been rejected. That is a proposal that you have been very strong on and is a vital part of you bill. S. 397.

The hearing will also focus on foreign policy export controls. Although S. 434 leaves that area open, my own views are based upon the concern that we must preserve the ability of the President to conduct an effective foreign policy short of the resort to war. Tying the hands of the President is the exact opposite direction that we should be heading if we are able to acknowledge that an increasingly diverse world will make it increasingly difficult for the United States to meet its objectives in our international relations and that our growing interdependence has made success in our international relations even more critical.

Export control, granted, is a blunt instrument of foreign policy. It should not be used promiscuously. That does not mean that it has no use. When diplomatic notes, withdrawal of ambassadors, congressional resolutions, travel restrictions, and limits on foreign aid won't do, however, and we don't want to send in the marines, we are going to need economic tools that are not so encumbered as to make them unusable.

As I have often stated, I am willing to keep an open mind on these issues and have been discussing them very closely with you and your staff, Mr. Chairman. As I mentioned, S. 434 makes no changes to the current law in the area of foreign policy controls. This is intentional, to provide for the accommodation of the ideas of other Senators in this important area. So I indicate once again my desire to work out a consensus bill. I feel optimistic about that prospect. This, of course, will require some give and take on all sides and I'm certainly willing to do that. And I thank you, Mr. Chairman, for letting me go out of order.

Senator **Heinz**. Senator Garn, first of all, let me thank you and commend you for taking an extraordinarily active interest in the Export Administration Act and any amendments to it. You have presented to the Congress and this subcommittee some very creative and serious ideas.

Our deliberations have been substantially enhanced by your very active participation, notwithstanding your many other responsibilities, one of which I understand is calling you away from us this morning, and I think that there's going to be a surprising amount of unanimity on the committee with respect to how we handle the issue of foreign policy control. I don't know of anybody on the committee, although we have had some witnesses, who said there shouldn't be any foreign policy controls. I don't think there are any votes on the committee to do away with the President's right to have foreign policy controls. I suspect we will continue to debate what is the most appropriate method of organization to achieve the goals that you have in mind that you hope to achieve by the Office of Strategic Trade. Clearly, those are most important goals and we are united in a need to accomplish a better administration and prevention of leakage of critical technology than we have today.

There are going to be other issues, probably none quite as significant as those, we will I think also come to an agreement on.

But I just wanted to say before you took your leave to go to your other colleagues today that we are very indebted to you.

Senator **Garn**. If I could infringe on you for just one more moment, I'd just ask one question that I wanted to ask and the rest of mine I suppose could be put in the record.

I've been accused, Mr. Olmer, by one of the leading players in the review of the act on the House side of overstating the technology leakage problem. As you know, I and other members of this committee have long described it over many years as a hemorrhage and, if anything, I think hemorrhage—the evidence is so overwhelming of the technology leakage. We have had hearings in this very room, closed hearings, showing us just in the last month some of that leakage. If anything, hemorrhage probably understates the situation. You've answered that question for me in writing, but could you elaborate just a little bit on whether it is a hemorrhage or a leak?

Mr. **Olmer**. Thank you, Senator Garn. As you point out, I did respond in writing to that question and I completely share your view that there certainly has been a hemorrhage and I don't have any evidence that would indicate that it has been reduced to a trickle.

I think it, however, very wise for us to be cautious in making assessments as we go along. For example, I attended much if not all of that closed session briefing and it's clear that a great many things that were pointed out were available to the Soviets from open sources. We've had a hemorrhage of technology, but all that technology hasn't floated to the Soviet Union as a consequence of misapplication of the Export Administration Act. It all hasn't happened because of the responsibilities being vested in the Department of Commerce. It all hasn't happened, and perhaps even a substantial part hasn't happened because of inadequate authorities contained within the act.

Now that doesn't in any way minimize the nature of the problem or our commitment to deal with it. It does, however, give me an opportunity to in part defend the way in which the administration is approaching resolution of the issue.

I happen to believe there continues to be a very serious problem of hemorrhage.

Senator **Garn**. Thank you very much.

Thank you, Mr. Chairman.

Senator **Heinz**. Thank you, Senator Garn.

Senator Proxmire.

Senator **Proxmire**. Thank you, Mr. Chairman. Mr. Chairman, I don't have an opening statement. I would like to say that I strongly support Senator Garn's position in this area. The evidence that I've seen indicates that the progress that the Soviet Union has made militarily, the improvement in their aircraft, in their tanks, in their missiles, and particularly in the strategic area, overwhelmingly comes from Western technology and particularly from our own advances. It's just appalling that some of that, unnecessarily it seems to me, falls into their hands and any action we can take at whatever the price, whatever the cost, whatever the limitation on our own exports, I think we have to pay it.

I would like to tell you, Mr. Chairman, that I too have to leave in a few minutes. I'm going to come back, but I have to go to the floor and so I would hope that Mr. Olmer in the course of his testimony or perhaps at the end of his question period would respond to this question.

The Export Administration Act requires that before permission to export domestic oil may be granted at least 75 percent of any cost saving must be passed on to consumers.

My question would be, why should we remove that provision from the law? But I don't want to get into that now and I want to thank you very much for giving me this opportunity.

Senator **Heinz**. Senator Proxmire, you too, have been a very active participant and I know about your other commitments and I'm deeply indebted to you for your very active participation in all the hearings and deliberations we've had.

Senator Mattingly.

Senator **Mattingly**. I have no opening statement. I would just make one comment in reference to what Senator Garn and Senator Proxmire said. Secretary Olmer, you made the comment about the Russians could get things from open sources, which I'm sure they probably pay for. I would just say if we have this hemorrhage, it would be nice if they paid for the hemorrhaging part retail.

Senator **Heinz**. Secretary Olmer, would you please proceed?

Mr. **Olmer**. I'll defer to Mr. Dam.

Senator **Heinz**. Excuse me. Secretary Dam.

STATEMENT OF KENNETH DAM, DEPUTY SECRETARY, DEPARTMENT OF STATE

[Complete statement follows:]

Statement of Hon. Kenneth W. Dam, Deputy Secretary of State

Thank you, Mr. Chairman. I welcome the opportunity to discuss with this Subcommittee the reauthorization of the Export Administration Act of 1979. That act provides authority to the President to control exports for reasons of national security, foreign policy and short supply. The focus of my remarks today shall be on foreign policy controls.

I shall begin, Mr. Chairman, with a discussion of the purpose of foreign policy export controls, and an explanation of the Administration's proposed amendments to section 6 of the act. I shall then review two relevant Congressional proposals. Finally, I shall outline our reasons for supporting a revision of section 7 of the act, which pertains to short supply controls.

FOREIGN POLICY CONTROLS—SECTION 6 OF THE ACT

The Export Administration Act of 1979 attempts to distinguish between "foreign policy" controls, and controls imposed for purposes of "national security." That distinction is an ambiguous one, for security is the most basic concern of a nation's foreign policy.

But the substance of the distinction is clear. As opposed to the ongoing need to restrict certain militarily-related exports in defense of the nation's security, controls imposed under section 6 of the act are intended as a flexible instrument of foreign policy. They are but one of the diplomatic tools available to the President to further our foreign policy objectives.

Simply put, foreign policy controls are designed to achieve important foreign policy objectives, particularly with respect to nations which violate internationally accepted norms of conduct.

To screen out exports that could contribue to human rights violations, we require a validated license for export of crime control and detection equipment. That requirement applies to exports to all countries except NATO members, Japan, Australia, and New Zealand.

To distance the United States from the offensive practice of apartheid, we control exports to South Africa of weapons (and the equipment to make them), and U.S. origin items relating to military and crime control equipment.

To prevent the spread of nuclear weapons, we restrict exports of "dual-use" nuclear equipment and technology. Controls on such items as hot isostatic presses, flash x-ray equipment and high-speed cameras are an essential part of our stance against the proliferation of nuclear weapons.

To combat international terrorism, we control exports of security items and aircraft to Syria, Yemen, Libya, and Cuba. Our controls inhibit the ability of these nations to destabilize their neighbors and export not goods, but terror.

In the East-West context, foreign policy controls serve to demonstrate U.S. opposition to behavior which is inconsistent with the building of a peaceful, stable community of nations. Internal repression by the Soviet Union, the brutal Soviet invasion of Afghanistan and Soviet-backed repression of human rights in Poland have all demanded and received a firm U.S. response.

The examples I have cited indicate the ways in which the President has used export controls to further our foreign policy objectives. In each instance we have tried to strike a balance between the need to maintain our competitive position in world trade and other important foreign policy interests.

In seeking this balance we are guided by the criteria Congress set forth in section 6 of the current act. Those criteria include considerations such as the foreign availability of controlled items and the availability of other means to achieve our policy goals. We have been mindful of these criteria, and recent trade figures reflect that. License denials in 1982 amounted to less than one percent of the $140 billion of manufactures exported in that year.

The criteria in section 6 have also provided a helpful framework for reconciling competing interest. The March, 1982 expansion of our controls on exports to Libya is a good example. We all condemn the actions taken by Colonel Qadhafi to encourage terrorism and counter U.S. interests and initiatives. We all condemn Qadhafi's virtual annexation of land in Chad and his sustained efforts to destabilize the pro-Western government in the Sudan. The controls the President imposed were intended to limit the contribution U.S. exports might make to Libya's ability to undertake these actions. After reviewing the various options, we redesigned the controls to limit their retroactive and extraterritorial effects. An exception for pre-existing contracts was included. Exceptions were also included for goods already outside the United States, and for use of U.S. components abroad.

The tailoring of controls, as in the case of Libya, can reduce the economic burden they may impose on U.S. businesses. In an effort to minimize that burden further, some witnesses at Congressional hearings on the Export Administration Act have advocated measures that would restrict the President's authority to use export controls. These witnesses have advocated a requirement for congressional review and concurrence prior to the imposition of any foreign policy export controls. But the practical and symbolic value of export controls depends on their timing in relation to the acts which we oppose. Lengthy review prior to imposition could render the effect of the controls useless in some circumstances.

To the extent that Congress wishes to reivew foreign policy controls, the mechanism for that review already exists. The 1979 act requires an affirmative decision each year on the part of the President to renew the controls, with a report to the Congress.

The annual review has served in many instances to sharpen the focus of controls, to reduce their adverse economic effects, and to ensure that they are still relevant to the purpose for which they were originally imposed. For example, the controls imposed following the Soviet invasion of Afghanistan on exports intended for use if the Moscow Olympics were allowed to expire this year. Other controls, such as those on exports of computers to South Africa, have been clarified to reduce the uncertainties that would otherwise face U.S. exporters. Such action does not have to depend on the annual review, as the President showed when he lifted the grain embargo against the Soviet Union imposed by the previous Administration.

ADMINISTRATION AMENDMENTS TO SECTION 6

This administration has used the annual review process to minimize the adverse impact of foreign policy controls on American businesses and allied countries. Our proposed amendments to section 6 are directed at further minimizing the adverse impact of controls.

First, we propose a general policy statement explicitly declaring our intent to minimize the impact of foreign policy controls "on pre-existing contracts and business activities in allied or other friendly countries," to the extent consistent with the underlying purposes of the controls. A certain degree of spillover into third countries may inevitably result from the use of economic controls. But we wish to make clear our desire to limit such extraterritorial and retroactive effects to the extent possible.

Second, the administration wishes to strengthen protection for the sanctity of contracts in existence at the time the President imposes foreign policy controls. Our proposal would provide an exemption for any export sales contract entered into before the imposition of controls, where the terms of the contract require within 270 days after the control is imposed. This would apply unless the President determined that it was in the "overriding national interest" to include pre-existing contracts within the scope of the trade restriction.

We feel such a contract sanctity provision is essential to assure that our export control policy does not call into question the reliability of American suppliers. There may, of course, be unforeseen circumstances in the future which could lead to a Presidential override. But the new language would clearly indicate that, in the absence of exceptional circumstances, we would not act for foreign policy reasons against a large class of existing contracts.

Finally, as a humanitarian consideration, the administration has proposed an exclusion from foreign policy controls for donations of articles such as food or clothing where such items are intended to relieve human suffering.

Beyond the changes I have noted, we do not see a need for revisions of section 6. We believe that the present Act gives Congress adequate opportunity to provide guidance, while allowing the President sufficient flexibility to implement foreign policy in a constantly changing international environment. With the addition of a contract sanctity provision, Section 6 provides further recognition of the legitimate needs of American exporters.

COMMENTS ON OTHER PROPOSALS

I should like now to comment on those bills presently before the Senate which affect the administration or operation of the act and which have a particular impact on the issues we are discussing today.

Senator Garn's bill, S. 434, would place the administration of foreign policy controls, as well as those for security and short supply, under a new and independent Office of Strategic Trade. This new Cabinet-level office would also subsume the State Department's munitions control responsibilities under the Arms Export Control Act.

Mr. Chairman, we do not see any advantage in establishing yet another agency. For example, with regard to foreign policy controls, a new agency would have little to contribute to the consideration of the criteria set forth in the Act. The shape and character of American foreign policy is still the task of the President working largely through the State Department. The Commerce Department must be involved in assessing the technical aspects of controls and their impact on U.S. exporters. A new agency would add little to the process of resolving foreign policy export control issues.

I should like also to comment on your proposal, Mr. Chairman contained in S. 397. Your bill would, among other things, require the President to make a whole series of determinations before he could impose or extend foreign policy controls. The President, for example, would have to report to Congress that other countries supported the imposition or expansion of the controls; that the controls would not have an adverse extraterritorial effect on countries friendly to the United States; and that the controls would not have an adverse effect on the export performance of the United States. We cannot support this proposal.

The imposition of foreign policy controls does involve, and ought to involve, the careful consideration of the types of criteria presently set out in section 6(b) of the act. But we should not make each of those criteria an absolute standard that must be met before controls can be imposed. To do so would vitiate the careful balancing process that is critical to the President's use of export controls in furthering U.S. foreign policy interests. Removing the President's ability to balance competing considerations would be a regrettable action, and would call into question the continuing viability of foreign policy export controls.

Your bill, Mr. Chairman, would also require the imposition of import controls against countries whenever foreign policy export controls are used, "subject to such exemptions for specified goods and technology as the President may prescribe." I understand the desire to draw the focus of trade sanctions away from what has been called an "export control psychology." I also recognize that our European allies occasionally use import sanctions in a modest way in place of, or as a supplement to, export controls. Indeed, the European Community did just that in reaction to the imposition of martial law in Poland and to the Argentine invasion of the Falkland/Malvinas Islands. But there are major disadvantages to resorting to import controls against countries in non-emergency situations.

First, the inflexible requirement you suggest would prove unworkable under the present export control systm. Foreign policy controls of one sort or another apply to virtually every foreign country. For example, it would be quite inappropriate to combine export controls on nuclear non-proliferation or crime detection equipment with a mandatory set of import controls.

Second, even if the authority to impose import controls was discretionary, such controls would in many situations run afoul of our GATT obligations concerning quantitative or licensing restrictions on imports.

Third, this proposal would impose yet another regulatory burden on international business transactions.

In addition to the proposal in S. 397 authorizing import sanctions against countries, that bill would authorize import sanctions against individual companies which violate our export control laws. We believe that import sanctions against companies should be applied only in the narrow but important class of cases involving violations of our national security export controls.

By comparison, S. 397 threatens far broader import sanctions that would have a chilling effect on U.S. exports. Foreign companies would avoid U.S. suppliers for fear that some inadvertent violation of our foreign policy controls would rob them of their U.S. markets. The use of import sanctions against foreign policy export control violators could also be seen as a provocative extraterritorial act, possibly resulting in retaliation by the country of the foreign company affected.

SHORT SUPPLY CONTROLS—SECTION 7 OF THE ACT

The rationale behind the short supply controls in Section 7 of the Act is uncomplicated. As the Act states, such controls are to be used to protect the domestic economy from an excessive drain of scarce materials and to reduce the inflationary impact of foreign demand. The demand and supply of commodities in short supply are constantly changing in response to domestic and international market conditions. In order to reflect those changes, the President must have the flexibility to impose or lift restrictions as necessary.

While the President has such authority under Section 7 of the present act, the section also includes a series of legislatively mandated short supply controls which we believe are no longer warranted in the light of current circumstances. As an example, the restriction on the export of Alaskan crude oil in current market conditions imposes costs on the United States economy without necessarily providing corresponding national security or economic benefits.

I should stress that the administration has not yet reached a position on the export of Alaskan oil, and that no such exports would result automatically from the amendment we are proposing. We simply believe that in the long run more discretion in this area would be desirable, because such exports could provide significant savings in the distribution of petroleum within the U.S. economy. Any resulting distribution efficiencies would be reflected in higher values for Alaskan oil, lower costs to American consumers, and over time a higher level of oil production from Alaska.

Even if some of the present controls were to be retained, we believe that they are more appropriately the subject of regulation rather than legislation. Removal of these restrictions would ensure that the President had the necessary flexibility to impose, modify or lift short supply controls as events dictate.

CONCLUSION

In closing, let me reiterate our view that the foreign policy controls are flexible diplomatic tools whose use in certain instances can further our foreign policy goals. We feel, however, that the importance of maintaining American exporters' hard-earned reputation for reliability merits the addition of a contract sanctity provision in section 6 of the act. The administration proposal would still allow the President to act when overriding national interests require it.

We also believe that the mechanisms set up by section 6 of the present act for congressional input and review of the export control process have functioned satisfactorily and are adequate.

We believe that administration of the controls by the Department of Commerce has served well at balancing the competing interests involved. The policy process would not be aided by the addition of another bureaucratic actor. We oppose the required imposition of import restrictions whenever export controls are imposed. Such import restrictions would have a detrimental effect on our trading relationships and would likely violate our international obligations under the GATT.

Finally, we would like to see the authority to impose short supply controls retained. But we would seek to eliminate the statutory requirements for controls that no longer serve the stated objectives of section 7 due to changed international conditions.

Thank you, Mr. Chairman. I would be pleased to answer any questions you might have.

Senator **Heinz**. Secretary Dam, just one question before I turn to Secretary Olmer.

In your summary, I gather you oppose the Office of Strategic Trade as well?

Mr. **Dam**. Yes.

Senator **Heinz**. I was wondering why you didn't say that.

Mr. **Dam**. Well, I thought I said that in substance. If not, let me make it clear that we do.

Senator **Heinz**. Thank you. Secretary Olmer.

STATEMENT OF LIONEL OLMER, UNDER SECRETARY, DEPARTMENT OF COMMERCE

Mr. OLMER. Thank you, Mr. Chairman. I have a statement that I would like to introduce for the record and only make a few comments briefly.

I've testified several times already on the administration's approach to renewal of the Export Administration Act, in particular on the national security component parts.

As a matter of comparison, I say that with respect to foreign policy controls especially, controversy has been the hallmark, controversy between the business community and the administration and between the administration and the Congress.

Where I come down is that the exercise of leadership isn't a popularity contest. One cannot always be certain in advance that a particular control will do what you think it will at the moment it's imposed. Sometimes it won't and sometimes it may but you can't develop hard evidence to prove the appropriateness or the utility of the control.

The President needs the authority to make these difficult choices, to exercise the leadership responsibilities that require judgment and oftentimes judgment made not on the basis of perfect advanced information.

Our efforts in the renewal process have been aimed at talking with virtually everyone who would be affected by these policy decisions and to many who simply have an opinion to offer. I've given a great deal of thought as to why the controversy exists and I believe that the explanation, strangely enough, is simple.

Virtually every American, if asked, would be in favor of restraining the export of products that have military significance to a potential adversary. Most businessmen support this as well, or at least with only one or two exceptions that I'm aware of are timid about challenging the responsibility which the Government has for making judgments about what should be authorized for export.

But foreign policy controls are another matter. It's often impossible to see hard results or the relevance of the controls to achieving a measurable objective and gestures, as in a statement of moral outrage, isn't sufficient where jobs are at stake and lost contracts possibly result.

The bill we are introducing for consideration by the Congress, I believe reflects these efforts, and I believe also reflects the sensitivity to the concerns and the interest of the parties. Even in some of the most controversial decisions that have been taken over the preceding 2 years, some measure of public support, both in the United States and abroad has been evident.

I speak here of the pipeline decision, as well as antiboycott controls. I think this points to what I believe to be an underlying issue, that of the impossibility of applying or refraining from applying foreign policy controls, merely because of the relative degree of its antecedent popularity.

[The complete statement follows:]

PREPARED STATEMENT OF LIONEL H. OLMER
UNDER SECRETARY
FOR INTERNATIONAL TRADE ADMINISTRATION
BEFORE THE
SUBCOMMITTEE ON
INTERNATIONAL FINANCE AND MONETARY POLICY
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE
WASHINGTON, D.C.

April 14, 1983

I appreciate the opportunity to discuss with this Subcommittee the Department of Commerce's implementation of foreign policy and short supply controls under the Export Administration Act of 1979. My testimony will also cover related aspects of the Administration's bill to replace this Act when it expires in September 1983, as well as certain elements of the Chairman's legislative proposal.

Mr. Chairman, the issue of foreign policy controls is a complex one that attempts to balance many vital U.S. foreign policy objectives: human rights, strategic, political, and trade. The Reagan Administration has reviewed export controls with an eye toward reducing the regulatory burden on U.S. business while permitting the attainment of our foreign policy objectives. We have consulted with the President's Export Council, held public hearings around the country, and solicited public comment through Federal Register notices on the issues of foreign policy controls in general as well as on specific controls. These comments have been an integral part in the Administration's review of the Act.

The Administration, in its proposed bill, offers certain changes in the foreign policy section of the Act. Before I discuss those changes with you, I would like to give you a brief overview of the wide array of foreign policy controls now in place:

Human Rights - Products designated as "crime control and detection" equipment are controlled to all countries except NATO, Japan, Australia, and New Zealand, to screen out those exports that could aid in violations of human rights.

Anti-terrorism - National security controlled items valued at $7 million or more for military end users or uses, aircraft valued at $3 million or more, and helicopters over 10,000 pounds empty weight (except civil aircraft for scheduled airlines) are controlled to Syria and the People's Democratic Republic of Yemen to discourage actions in support of international terrorism. Libya and Cuba are also designated terrorism supporting countries, but are themselves already subject to more restrictive controls.

Libya - All items to Libya require a validated export license except food, agricultural commodities, and medical supplies. National security controlled items are generally denied except for those cases involving contracts entered into prior to March 12, 1982, where failure to obtain a validated export license would not excuse performance under the contract. In addition, previous controls on off-highway wheeled tractors, aircraft and aircraft parts remain in effect for Libya as well as terrorism and regional stability controls.

South Africa and Namibia - There remain embargoes on arms and the equipment to make them. In addition, we embargo to military and police entities U.S. origin items subject to export controls for national security, nuclear nonproliferation, and crime control purposes, as well as automotive vehicles, watercraft, parts and accessories, and tires.

Regional Stability - Specific commodities going to all countries except NATO, Japan, Australia and New Zealand (e.g., vehicles built to military specifications, equipment to produce military equipment, vehicles and explosives, as well as components for ammunition);

North Korea, Vietnam, Kampuchea, and Cuba - There is a general embargo on these countries, with limited exceptions, such as gift parcels valued at less than $200.

USSR - Equipment and technical data for oil and gas exploration and production that were under control prior to the December 30, 1981 USSR sanctions, remain controlled. While licenses to export most equipment in this category are reviewed with a presumption of approval, applications to export technical data are reviewed with a presumption of denial. Truck manufacturing equipment for the Kama and ZIL truck plants is embargoed.

The Department of Commerce administers foreign policy controls in consultation with the Department of State. Under the Act, export controls imposed on foreign policy grounds expire one year after imposition unless renewed. Our annual report to Congress for renewal purposes allows the Administration and the Congress to weigh the need, utility and cost for each foreign policy control. Since the events and conditions which give rise to the imposition of foreign policy controls can change during the course of each year, however, I would like to point out that the Administration's review and modifications to those controls is actually an ongoing process, rather than only a once-a-year effort.

In our annual review we attempt to minimize the burden of foreign policy controls on U.S. exporters. Consequently, following our last annual review we made changes such as modifying human rights and South Africa controls to sharpen descriptions and remove from control non-sensitive personal or general use items that have wide foreign availability. We also removed the controls related to the 1980 Moscow Summer Olympics.

Foreign policy controls are an instrument by which the President can attempt to exercise U.S. influence by means short of military action. The success of such controls should not be measured simply in terms of immediate modification of the undesirable behavior by a targeted country. Rather, foreign policy controls are directed toward other significant objectives, including:

(1) Deterring similar future actions;

(2) Mobilizing international support against the behavior of the target country;

(3) Extracting an economic cost from the targeted country; and

(4) Expressing political disapproval through non-military means.

Prior to imposing foreign policy controls, we seek to consult with Congress, industry, and foreign governments. In addition, we consider the following six criteria which are set forth in the Export Administration Act:

1.) The probability that the controls will achieve the foreign policy goal in light of foreign availability as well as other factors;

2.) The control's compatability with other U.S. foreign policy objectives, including strategic interests and countering international terrorism, and with overall U.S. policy toward the country which is the proposed target of the controls;

3.) The reaction of other countries to the imposition or expansion of such controls by the U.S.;

4.) The likely effects of the proposed controls on the export performance and competitive position of the U.S. in the international economy, and on U.S. companies' reputation as reliable suppliers;

5.) The ability of the U.S. to effectively enforce the controls; and

6.) The foreign policy consequences of not imposing the controls.

Mr. Chairman, current provisions of the Export Administration Act provide the President with the flexibility needed to impose foreign policy controls in furtherance of U.S. foreign policy objectives. Placing undue restrictions on the President's authority to impose foreign policy controls would only serve to limit the effectiveness of such controls.

Your proposal, Mr. Chairman, would require us to determine that all six criteria in the Act, including foreign availability, have been met. The Administration bill leaves unchanged the existing Act's provisions in this regard. The current Act does not specify, nor do I believe it should, that all of these criteria must be satisfied. Depending on the foreign policy goal being sought, the relative significance of any or all of these factors may change. For example, we control all equipment designated as "crime control and detection" equipment to every country except NATO countries, Japan, Australia, and New Zealand, in order to screen out those exports that would aid in violation of human rights. Because it is an underlying democratic principle of this country to uphold and maintain human rights, factors such as foreign availability and the effects of controls on U.S. export performance are sometimes not determinative of the decision to impose foreign policy controls.

The same holds true for our anti-terrorism controls. While foreign availability is a major consideration in this instance, our primary goal is to ensure that no U.S. items may be used to enhance certain countries' capability to support terrorism. Certainly, terrorism is a problem international in scope and our unilateral action may not solve it. But we choose not to associate ourselves with the activities of these regimes.

Moreover, I foresee great difficulty in developing sufficient evidence to "prove" that any of the criteria have, indeed, been met. In some cases, this must necessarily be a subjective judgment.

This Administration recognizes that foreign policy controls may impose economic costs on U.S. businesses and may undermine their reputation as reliable suppliers. We share the Chairman's concern that a mechanism is needed to provide protection for existing contracts at the time of the imposition of controls.

Consequently, the Administration proposes to protect the sanctity of contracts in existence at the time the President imposes foreign policy export controls. Specifically, the Administration's bill would protect existing sales contracts, the terms of which require delivery within 270 days from the imposition of controls, unless the President determines that the overriding national interest requires that such exports be prohibited. This provision represents our commitment to minimize the burden on business firms arising from the imposition of foreign policy controls, while at the same time preserving the President's foreign policy flexibility. It is important to note that the Executive Branch has, in the past, protected pre-existing contracts from foreign policy controls. Such protection was extended when controls were imposed on Libya.

In contrast to the Administration's proposal, we believe that the contract sanctity provision in S.397, which does not allow for a Presidential override, unduly restricts the President's foreign policy authority.

The Administration bill also contains a policy statement that makes clear that we must minimize the impact of these controls on existing contracts as well as on business activities in allied or other friendly countries to the extent consistent with the underlying objectives of the control.

Finally, Mr. Chairman, we cannot agree with your proposal to restrict imports of the products of a country upon which U.S. foreign policy export controls are imposed. To do so could have serious foreign policy repercussions. In addition, we believe that such a measure could infringe upon our GATT agreements.

I would now like to address the subject of short supply export controls.

Under the authority of Sections 3(2)(C) and 7 of the Export Administration Act of 1979 (EAA), the Department of Commerce may impose controls on the export of commodities "where necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand."

The range of commodities the Department must consider for short supply controls is diverse--from grains, logs and other agricultural commodities to chemicals, metals, and other industrial materials. In determining whether to monitor exports pursuant to Section 7(b) of the EAA, or to apply short supply controls with respect to a particular commodity under Section 7(a), we conduct a thorough analysis of all relevant factors in consultation with other interested Federal agencies and other countries when appropriate. These factors include, but are not limited to, an assessment of

1) alternative domestic and foreign sources of supply,

2) transportation constraints which may contribute to an inequitable distribution of the commodity,

3) the extent to which exports affect domestic and foreign supplies and prices,

4) the general level of economic activity both here and abroad (and specifically within the industries affected),

5) in the case of raw materials, the contribution of the raw material cost to the overall price of the finished product,

6) any other influences on the price and supply of the commodity, including the effect on the domestic market of anticipated government actions with respect to export monitoring or controls,

7) the probable impact of the imposition of monitoring or controls on those domestic industries which would be directly or indirectly affected, and

8) the probable impact of the imposition of monitoring or controls on our trading partners, including the possibility of retaliatory actions by other countries, and the effect of such controls on the reputation of the U.S. as a reliable supplier of commodities to the world market.

There are a variety of ways a commodity in potential short supply may come to our attention. Private citizens, industry associations, a Congressman on behalf of a constituent, or an industrial consumer of a commodity may contact the Department of Commerce with complaints of inability to obtain supplies. A sudden event, such as a military incursion in a nation which is a leading supplier of a strategic commodity, might prompt a review and/or action with respect to short supply controls. But more often, we are forewarned of potential short supply problems by industry specialists in the Department of Commerce and other agencies.

Export Monitoring Mechanism

When monitoring is initiated, exporters of commodities in potential short supply are required to submit data by commodity and destination on actual exports, anticipated exports, and export prices. Inventory-holders of such commodities may also be required to submit comparable stock data.

The frequency with which reports are required is determined after reviewing the characteristics of the particular commodity market, including the frequency with which meaningful information becomes available. Monitoring reports, summarizing the information received, are published in the Federal Register with the same frequency as the information is collected. In making monitoring decisions, an assessment is made of the adequacy of data already available, the importance of additional information obtainable through monitoring and other, less burdensome ways of obtaining needed additional data.

Export Control Mechanism

When actual short supply controls become necessary, they are usually administered by the establishment of quotas based on the historical pattern of U.S. exports. Such a system maintains our traditional trading relationships, and assures an equitable distribution among our trading partners of those supplies available for export. Export control programs are tailored according to the commodity's current market structure, and the reason underlying the commodity shortage. Thus, no two short supply control programs have been designed exactly alike, even for those commodities subject to chronic shortages.

We feel the above mechanisms, and the criteria and procedures presently in place reflect the intent of Section 3(2)(c) of the EAA. Thus, we propose no change in either the short supply discretionary authorities or the manner in which they are implemented. However, we do oppose the continuation of mandatory control programs and other so-called short supply provisions in the Act. Thus the Administration's bill proposes to delete sections 7(c), 7(d)(1) and (2), 7(e), 7(f) and 7(h) through 7(j). These provisions require that exports of Alaskan crude oil, petroleum and petroleum products, unprocessed western red cedar, and horses exported by sea be subject to controls. They also provide for a petition procedure relating to recycled metallic materials, and an exemption from short supply controls for barter transactions. The removal of these provisions is in keeping with the Administration's view that such provisions are redundant, and thus unnecessary.

Section 7(c)--The Petition Procedure

This provision establishes a procedure whereby the recycled metallic materials processing industry (sometimes knows as the scrap industry) may petition the Department to either monitor or control the export of such commodities.

During consideration of the Export Administration Act of 1979, the Administration opposed the adoption of Section 7(c) on the grounds that its provisions were redundant with the general short supply authority of the EAA. Our view remains that the general authority of the Act provides the President the flexibility needed to address any short supply issue, including shortages of scrap materials. Thus, the Administration bill proposes that Section 7(c) be removed.

Section 7(d)--Crude Oil

The prohibition on crude oil exports in the EAA was imposed as a direct result of the oil embargo in 1973, and was a reflection of the oil shortages experienced at that time. Consequently, section 7(d) of the EAA, plus four other similar statutes -- such as the Naval Petroleum Reserves Production Act, the Energy Policy and Conservation Act, and the Mineral Lands Leasing Act, as amended by the Trans-Alaska Pipeline Authorization Act -- restricted the export of crude oil to ensure adequate supplies for the U.S.

The Administration bill removes section 7(d), except for the paragraph within that section permitting the President to authorize exports of oil pursuant to a bilateral international oil supply agreement or the International Emergency Oil Sharing Plan of the International Energy Agency. The other statutes I mentioned previously would remain unchanged and require the control of crude oil exports.

Section 7(h)--Barter Agreements

Section 7(h) provides an exemption from short supply controls for commodities exported pursuant to a barter agreement. Since the Secretary already has sufficient discretionary authority to permit such an exemption from short supply export controls, this provision is redundant.

Section 7(i)--Unprocessed Red Cedar

Section 7(i) imposes a three year, declining quota on the export of unprocessed western red cedar harvested from State and Federal lands, with such exports prohibited after September 30, 1982. Removal of Section 7(i) is consistent with the Administration's objective of removing all mandatory export control programs from the EAA. Mr. Chairman, I note that your bill also removes section 7(i).

Section 7(j)--Export of Horses

And lastly, it is inappropriate that a provision such as 7(j), established solely for the purpose of ensuring against the maltreatment of horses transported by sea for purposes of slaughter, be included in the EAA. We are in favor of the humanitarian treatment of animals; we do not, however, believe that the EAA is the appropriate vehicle to accomplish this purpose. Therefore, like your bill, the Administration bill removes this section.

Sections 7(e) and 7(f)--Refined Petroleum Products

Section 7(e) of the EAA (the so-called Moakley Amendment) requires that exports of petroleum products be subject to licensing, irrespective of short supply criteria. It also requires that, other than exports made pursuant to quotas established by the Secretary of Commerce, any export license application which, if approved, would result in the shipment of over 250,000 barrels of a refined petroleum product to any country during a fiscal year be reported to the Congress. Once reported, such applications may not be granted for 30 days, providing Congress an opportunity to object.

While export quotas were in effect, administration of this provision resulted in very few submissions for Congressional review. When the quotas were lifted on October 2, 1981, the Moakley Amendment began to be applied to virtually all applications received. Thus, almost all export transactions were subject to a 30-day delay, thereby effectively precluding the U.S. petroleum industry from engaging in the world petroleum spot market. We view this provision as an unnecessary constraint on the petroleum industry at the present time.

In addition, we propose that section 7(f) be deleted from the EAA. That section is designed to exclude exports of petroleum products produced from foreign origin oil and refined in Foreign Trade Zones from export quotas. Because quotas have been lifted, section 7(f) is no longer necessary.

The Department will continue to approach the issue of short supply export controls in an equitable manner, balancing our nation's role as both a major supplier and consumer of those commodities vital to our economic well-being. It is our intent to attempt the difficult task of meeting the challenges inherent in fulfilling that responsibility, with the continuing interest and cooperation of the Congress.

Finally, Mr. Chairman, I want to address the Anti-Boycott section of the EAA. The Administration Bill does not propose any changes to this section of the Act. Many believe there are inconsistencies and overlap between the Ribicoff Amendment, which imposes tax penalties on those companies which comply with foreign boycotts, and the EAA. We believe there must be a greater consensus between all interested parties before a legislative solution can be achieved.

That concludes my prepared statement, Mr. Chairman. I will be pleased to answer any questions you may have.

Mr. OLMER. Thank you, Mr. Chairman. I would be pleased to respond to any questions and, if you would like, I would answer Senator Proxmire's question regarding the McKinney amendment provisions.

Senator HEINZ. Very well. Secretary Olmer, do you have a position on the Office of Strategic Trade?

Mr. OLMER. Oh, yes, sir. I thought I made that abundantly clear, the administration opposes the Office of Strategic Trade and also opposed the proposed transfer of responsibilities for criminal enforcement from the Commerce Department to the Customs Service of the United States.

CONTRACT SANCTITY

Senator HEINZ. I would like to start with the issue of contract sanctity. It can be said, at least the administration recognizes the problem in that area or else you wouldn't have a provision in the bill, and I do salute you for recognizing the problem, even though it would have been hard to be blind to it.

My concern is, as I stated in my opening remarks, that there may not be much difference between current law and what you propose, because you do give the President an exemption from the contract sanctity provision, if he believes that failure to curtail such exports would prove detrimental to the overiding interest of the United States.

Secretary Dam, why do you believe that that is a substantially stronger provision than existing law which, in my judgment, sets forth, essentially, that this is the reason for imposing foreign policy controls in the first place?

Mr. DAM. Senator, let me start off by saying that first of all, of course, there is no contract sanctity provision, except for agricultural commodities in the law. So what this does is reflect the view that we need to protect existing contracts. At the same time, we recognize that there may be instances at sometime in the future where it would be unwise to absolutely tie the hands of the President. There has to be some kind of savings clause, and I think perhaps in your question, you really implicitly recognize that. And if one does that, it is a question of how you draft that clause.

Now the criteria of section 6 are there and, while those are criteria that have to be considered, they don't amount to an overriding national interest. What we are talking about is an interest that overrides all contrary interests. That would be necessarily a limited exception. It is simply the necessity of having some flexibility for situations that may arise in the future.

Senator HEINZ. Well, are you saying that under the current law, we would abrogate contracts for purposes other than overriding national interest?

Mr. DAM. Well, that depends on the definition. What we are trying to say by overriding national interest is some interest that goes beyond the requirements of the existing statute, that there is some sort of situation in which it is extremely important to cut off the operations of some facility in a country. For example, what comes to mind is the U.S. truck engine assembly lines that were used to produce trucks in the Soviet Union to carry troops to Afghanistan. That would be a situation in which it would seem to me to be appropriate to consider cutting across existing contracts.

Now it is true that our proposal has evolved from a policy of this administration to avoid where possible cutting across existing contracts. For example, when we extended the Libyan controls last year, they were designed in such a way so the extensions did not cut across existing contracts.

Senator HEINZ. I noted that point in your testimony, and clearly you are trying to be more sensitive to that problem.

Mr. DAM. But what we want to accomplish here is to put that concept in legislation, so that the necessary confidence exists among our exporters and foreign business communities as to the reliability of U.S. supplies.

So it is a balance that we have to draw here, it seems to me.

Senator HEINZ. You and Secretary Olmer do realize that the United States has, by virtue of a series of efforts, the most recent one being the Yamal pipeline case, earned itself the rubric of a very undependable supplier. This situation is continuing, notwithstanding the fact that we have given up on the Yamal pipeline situation. We are still today kind of being crossed off the list of prospective bidders for projects that are originated by our European allies, because they are afraid. "Why get mixed up with those fellows. Who knows what they're going to do?" And when you get into a very expensive project, nobody wants to take a chance.

You are aware of that continuing problem.

Mr. **Dam**. I am certainly well aware that there is a potential difficulty there.

Senator **Heinz**. I will send you the testimony of our last panel which dealt with this in great explicit detail.

Mr. **Dam**. While I recognize what you are saying about the pipeline, I think the problem is much broader. In fact, the circumstances that come most prominently to mind arise in areas that fall under national security controls, arising from a series of export control actions in the past which, I think, on the whole have been fully justified. We want to do something about the question of contracts and that's why we have this proposal in the administration's bill.

Senator **Heinz**. Let me ask you this. What would you say is a higher standard, a fundamental foreign policy objective of the United States or an overriding national interest?

Mr. **Dam**. I gave the example of the supply to Afghanistan.

Senator **Heinz**. I understand the example. These are two standards, one you propose, another is one we use in other places. Which is a higher standard?

Mr. **Dam**. Oh, I am sorry. I misunderstood the question.

Senator **Heinz**. For the purposes of a Presidential override of the contract sanctity provision, which would be a higher standard, a higher threshold for him to meet, overriding national interest or a fundamental foreign policy objective of the United States?

Mr. **Dam**. I would think overriding national interest would be a much more restrictive formulation. That is the intention. We have many fundamental foreign policy goals—one of our foreign policy goals is a strong export community, and we believe that that is an extremely important foreign policy goal. We are saying, however, that there has to be some kind of override.

Senator **Heinz**. You, I am sure, have been lobbied rather strongly by our allies who are very concerned about the precedent of the extraterritorial application of U.S. law. Do you believe that your proposal is going to meet their concerns?

Mr. **Dam**. I think it will go a long way, certainly, in meeting their concerns, because what we are declaring if this proposal is adopted, is a policy that will state our intent in applying export controls to minimize the impact on business activities in allied or other friendly countries. So it not only reflects our intent, it also puts it into law, reflecting the common view of the executive and legislative branches in that respect.

FOREIGN POLICY CONTROLS

Senator **Heinz**. Let me move to the question of section 6, foreign policy controls, and how you and the Secretary, you, in particular, I guess, Mr. Dam, would react to some further thinking in that area.

Now if I understand your testimony, you like current law the way it is. You do not support the elevation of the set of considerations to determinations that I proposed in my bill. That is correct, is it not?

Mr. **Dam**. That's right.

Senator HEINZ. That is essentially, you understand, what we do, we take the existing set of criteria that have to be considered, and we elevate them to give them more importance.

Now let me give you a little of the thinking behind that. The report sent to Congress explaining the foreign policy controls with respect to the Soviet pipeline wasn't sent to Congress until after the controls on U.S. foreign subsidiaries and licensees had already been lifted—that was 5 months after you imposed them.

My question is, do you think that that procedure was in keeping with current law and, if not, what do you suppose we ought to do to insist that you not only take these things into careful account, but that when the law says, as it does, that the President shall immediately notify the Congress and explain his actions in terms of these criteria in section 6, that, indeed, that just isn't something to be casually ignored?

Mr. DAM. I would like to defer with regard to the example to Mr. Olmer, who is handling the administration end of it, but I would like to respond to the first part of your question.

Senator HEINZ. Well, it was Secretary Shultz, I believe, who—was it not—there was a little organizational change there, but if you want to yield to Mr. Olmer on that, fine.

Mr. OLMER. Maybe Mr. Olmer doesn't want to be yielded to. [Laughter.]

Mr. DAM. I was trying to handle my part of the problem. [Laughter.]

Mr. OLMER. I would be happy to try to respond, Mr. Chairman.

Senator HEINZ. Go ahead and try. [Laughter.]

Mr. OLMER. I am not a brave volunteer.

Mr. DAM. As I understand it, the question has to do with the current law and the requirement of consultation. Now I believe that that requirement, strictly speaking, has been complied with. You may seek more in the way of reports, but I think that a meeting of the need in that area can be accomplished without going as far as you go in your bill, Mr. Chairman. I don't think we have to make——

Senator HEINZ. We can come back to this, but maybe what you can do is first, please go back and review the record, correct me if it is wrong in any particular, but I think you will find that no written communication was received until the whole episode had been ended, let alone before it was begun. I think you will find there that the State Department does have rather explicit responsibilities in this area, but much more importantly, what I would like you to come back at us with, if you recognize that, indeed, there has been a problem, I would like you to suggest what kind of changes might correct what was a very real problem.

Mr. DAM. I would be glad to review that situation, and we would be glad to supply an answer to the question.

Senator HEINZ. My time has expired, and at this point, I want to yield to Senator Lautenberg, who may have an opening statement.

Senator LAUTENBERG. No, I haven't, Mr. Chairman. I will wait for the others.

Senator HEINZ. All right then. Then under the "early bird" rule, Senator Mattingly is recognized.

Senator MATTINGLY. Thank you very much, Mr. Chairman.

Mr. Dam, I am in agreement with the administration's decision to include a contract sanctity provision in its bill; however, in the United States we need a reliable policy, trade policy, export policy, that is consistent. How can we guarantee to our people in our country and to our suppliers, to the people that we are going to ship to, that we are going to be reliable, if the President is given the authority, as he is in your bill, to "prohibit, to curtail export bids for reasons of national interest"?

Just answer that question.

Mr. DAM. First of all, we are seeking through the language we are proposing, to make major steps in the direction of restricting Executive authority in such a way as to give that confidence by the policy declaration and by the preexisting contract provision. Now those are major steps. Also, through the administration of the act—I mentioned the Libyan controls, and so forth—we are trying to make clear that we are not going to cut across existing contracts.

I suppose at some point there has to be a tradeoff between absolute prohibition of export controls which would not be in the national interest—I don't think very many people think we shouldn't have any at all—and trying to achieve that confidence. But we think we have made a major move in the direction of providing the confidence in the reliability of American exporters, which I share your view of as very important.

Senator MATTINGLY. Well, then we can be reliable, meaning we need a consistent policy, meaning that we need consistent language also that is understandable by us and by the people that we would ship to. Then why wouldn't we be wanting to use the same language that we used in the sanctity of the contract in the commodities legislation that we passed? Because it seems to me that when you drop your wording about national interest and we put in there, in the case of war or national emergency, what is the difference. Why can't we just have the same language?

Mr. DAM. That was certainly considered in the administration review, and what we wanted was the best language for indicating that it only would be in situations where there was really an overriding national interest, overriding all other considerations.

Senator MATTINGLY. I heard the overriding national interest and I have heard national emergency. What is wrong with saying national emergency—war or national emergency?

Mr. DAM. Well, because national emergency suggests there is some emergency in the nation, and there may be situations involving overriding national interests, which fall short of a national emergency.

Senator MATTINGLY. Then I would say, if you got west of the Potomac that most people wouldn't understand the difference, and that I would, probably, if you got to our trade partners, they are not going to understand the difference. I don't see why you can't come up with the same terminology for all of it. This is one reason why we have problems in our trade policy, is because the State Department recommends one thing and the Agriculture Department recommends something and the Commerce Department, White House, National Security Advisers, and keep on going down the list.

It would seem to me it would be better for all parties, if we had one piece of language, and unless anybody can come up with some other better reasoning why what was passed last year, which is now law, shouldn't be used, it would seem to me that you ought to go back up and look at your reasoning in that area.

Mr. **Dam**. We certainly can look at it. I do feel though that it's been a steady trend in legislation, and in fact, there were quite a number of hearings on the subject during the 1970's to get away from national emergency language and——

Senator **Mattingly**. But national emergency——

Mr. **Dam**. That was not proposed by the administration.

Senator **Mattingly**. But could national emergency be also national interest, or would national interest include national emergency?

Mr. **Dam**. I think that national emergency suggests that there is an emergency to the Nation, and I think we could have some very fundamental foreign policy interests, overriding national interests, which do not involve a nationwide emergency. Beyond that, I don't think that the watering down of the national emergency language, which seems to be implied, in what you are just now saying, is a desirable precedent for all of the other national emergency provisions that are in the U.S. Code.

Senator **Mattingly**. Then you say the national interest is a watered down version of national emergency, which I would agree with too.

Mr. **Dam**. I beg your pardon. Excuse me.

Senator **Mattingly**. What you are proposing, the national interest, is a watered down version of national emergency.

Mr. **Dam**. No, I would say it is a different concept.

Senator **Mattingly**. Well, I can see us debating this on the floor of the Senate. [Laughter.]

IMPORT RESTRICTIONS VIOLATE INTERNATIONAL OBLIGATIONS

In your next-to-the-last paragraph in your concluding statement, the last sentence, you said "Such import restrictions would have a detrimental effect on our trading relationships and would likely violate our international obligations under the GATT."

I know you are an expert on the GATT, and you understand the legalities of GATT. I would suggest that—have you studied that and come up with a definite answer? You just said in here, you termed it likely would violate the rules of GATT.

Mr. **Dam**. I can respond to that right now. The legal issue is, if you have import controls that are country-specific, involving imports from the entire country, then under the provisions of article 11 of the GATT and the supplementary restrictions of article 13, you have a quantitative or licensing restriction on the importation of any product of the territory of any other contracting party. So what you would be doing would be limiting or restricting products from the territory of a member of the GATT. That is the problem.

Now it may be that there are more limited ways to avoid that legal problem. In fact, we do have a company-specific penalty provisions in our own bill which would, only in the national security area, limit imports from a company that violates the national security regulations. And that is not, you see, for any product of the territory. It is much more limited, and, therefore, avoids the problem of quantitative restrictions in violation of the GATT.

So that is what we are referring to.

Senator MATTINGLY. I am not trying to nitpick you on words—yet—but it would be better to change that word from likely to would violate, then it does violate our international obligations under GATT, rather than likely. The reason—what I am getting at is people have a hard time understanding what we are saying sometimes.

Mr. DAM. The chairman's bill might be adopted, and then we would have to defend the legality of the provision.

Senator MATTINGLY. All right. I have heard it said, if we tighten the strategic controls lists, then we are signaling to the Soviets a smaller list of critical goods or technology that they should really find out about. Now is that sort of letting the cat out of the bag, sort of reaching or not? I am for making the list smaller, so we have fewer restraints, but when you take that massive list, and you narrow it down, and you have this highly restrictive list, then does it pinpoint with the Soviet Union to say, maybe we ought to be concentrating in that area?

Mr. DAM. Mr. Olmer, would you like to respond to that.

Mr. OLMER. Senator Mattingly, in some respects, I would almost wish we could encounter that sort of situation. We now, as you know, have well over 100,000 products on the control list, and when we talk about narrowing it, we are not talking about narrowing it to things you might fit in a shoebox, we are talking about eliminating the things from that 100,000, to something that is more manageable. I don't have a number for you. There is no such number anyway in the administration. It is just a desire to rid that 100,000 list, of things which don't make any sense.

NATIONAL SECURITY CONTROLS

Senator MATTINGLY. One other question, going back to the sanctity of contract. Do you think the principles of sanctity of contract, has any place at all with regard to national security controls?

Mr. DAM. Well, the concept of national security controls—just a moment.

Senator MATTINGLY. You didn't answer the question.

Mr. DAM. The principles of contract sanctity do not really have a place in the security controls, when you consider what they apply to, because we are talking about something that would enhance, for example, the military capacity of the Soviet Union, and so I think that it's hard to see situations of that character. Now I am not saying that one can't come up with some illustrations. But as a general proposition, certainly, I don't think that would be a useful approach.

Mr. OLMER. Senator, it has no place in your desire for clarity of language. I would like to be short and specific. It has no place in the national security section, and that is simply because when you recognize that the transfer of a particular product or technology would materially contribute to the Soviet military capability, then we would be, I think, asinine, if we permitted the existence of a contract to be the means by which that product or technology can be transferred.

Mr. **Dam**. Let me supplement that by saying that, particularly in the context of this bill, I don't think it has a place, because what we are trying to do here is build up a whole Cocom arrangement. So we will be acting in concert with our allies. And in that situation, it seems to me very unlikely that there is going to be that kind of a problem, if all of the countries will be agreeing that certain products are not desirable to be traded in, because of national security concerns. So we are not going to have a sudden decision by the United States, which would cut across a lot of contracts. That may arise, and if it does arise, it is because of the sudden realization, perhaps, that there is something that is militarily critical, that had not been appreciated. But in general, we are trying to avoid precisely that problem.

Senator **Mattingly**. I see my time is up. I will come back to ask you a question on Cocom. I was not being facetious, when I referred to the terminology on sanctity of contract, but I think we ought to have a uniform language as much as possible, and I think it possible in this area that you all might want to look at that.

Thank you, Mr. Chairman.

Senator **Heinz**. Senator Lautenberg.

Senator **Lautenberg**. Thank you very much.

Secretary Dam, Mr. Olmer, we have had a chance to meet before, and I look forward to our dialog.

Mr. Dam, one of things that you said in your remarks was that there was a fairly de minimis denial percentage, I think you said 1 percent; am I correct—is that in terms of number of licenses applied for?

Mr. **Dam**. That figure, Senator, had to do with the percentage of denials as measured in terms of volume of exports compared to all exports.

Senator **Lautenberg**. That is revenue, that is the number of transactions. The number of licenses applied for. We are talking about prospective revenues.

Mr. **Dam**. It amounts to the dollar volume of the contracts.

Senator **Lautenberg**. What would that be in specific terms. You must have that. What is the total? That is very easy to calculate.

Mr. **Dam**. As I recall, it is slightly over $1 billion.

Mr. **Olmer**. If you look at manufactured exports, roughly, $150 billion. It is a little more than that. We are talking about, Mr. Dam said less than 1 percent, it's less than half of 1 percent. You are talking about significantly less than $1 billion in exports that have been affected as a consequence of export denials for national security reasons.

Senator **Lautenberg**. OK. Because underlying the testimony from each of you, I think there is a statement, at least certainly an assertion, that you want to see a strong export community. I think we are agreed on that, since, of course, most of our business now depends upon our ability to export, and the debate doesn't center about whether we want to protect our national security or not. It is a definition of terms that make this system work, and at the same time protect those things—the concern that runs through here is one of the definition of what is critical, and we will have to leave that to other hands. And the other is how do we enforce the denials or the process of licensing.

One of the concerns certainly is that, as Senator Mattingly said and others have said, and that is is the question of reliability of the American policy in terms of export business. Would you be concerned if a foreign government purported to control the export practices of the U.S. company which is a licensee or subsidiary of a foreign corporation?

Mr. **Dam**. Well, of course, and that is one of the reasons we are proposing a policy declaration which would state that it is the policy of the United States to limit the extraterritorial effect of export controls.

Senator **Lautenberg**. Well, then, what if your foreign policy goals were in opposition to those of a foreign government where we have a subsidiary operating and want to do business and feel it is appropriate to do so. Is that a conflict that is unmanageable?

Mr. **Dam**. Well, there is a tension here, obviously, between trying to make export controls effective, avoiding subterfuges and circumvention on the one hand and trying to avoid anything that could be called extraterritoriality on the other. It is what you are pointing to. It is a problem of drawing a line.

Senator **Lautenberg**. Well, then it suggests that we, if possible, try to narrow the definition.

Mr. Olmer, you responded before by referring to the long list of products that are under review, 100,000, I think you said. How do you narrow these definitions, so it can make sense, because what is being proposed, as I see it, by the administration still leaves a fairly arbitrary character to things, the 270-day limit which seems to exempt things from review, and yet there is the kind of catchall amendment that said except if?

PROPOSED CONTRACT SANCTITY PROVISION

Mr. **Olmer**. The contract sanctity provision being proposed by the administration applies to foreign policy controls, not to national security controls. So the arbitrariness that you suggest exists with respect to the size of the list concerns itself not with foreign policy, but national security. If by arbitrary—and I would agree it is arbitrary—is meant people sit around and make judgments on whether or not a particular product or technology warrant control, there is no alternative that I have been made familiar with, or from my own personal experience would propose to substitute for attempting to come to grips with the size and dimension of the nature of the complicated world in which we live.

When this began 25 or 30 years ago, the United States was the repository of most of the technology that had military developments. We could unilaterally, to a great degree, effect the transfer or the prevention of the transfer of technology to the Soviet Union. We don't have that ability any longer. And the size of the dimension of technology is such that the list just keeps growing.

Senator **Lautenberg**. I am inclined to agree that the problem is not going to be product definition or that kind of thing. It is trying to comment in terms of what is the reliability of the commitment made by American companies to deliver on the contract that it has made. That is the thing that I think rattles the cage of all our business partners. Somehow or other, I think one part of that, of course, is the enforcement of that which is stated, and the other is the definition of the rules. And I am concerned, for instance, what happens with a service contract— forgive the reference—a computer service contract, something that I think is of interest to this Nation as a whole, maybe even me specifically, but what happens when that process starts? Are we in a position that we could begin work and then have the administration come down, the President come down and say, "OK, this and that was clearly something that violates our foreign policy objective, and we are going to pull back on it"?

Mr. OLMER. Well, we, of course, have not written implementation to this kind of proposal, and that will be a very difficult task. Quite frankly, in the interagency debate leading ultimately to this proposal, certain people voiced objection that it would be very difficult to define precisely all situations, and there might be situations in which contractors could have a continuing service arrangement. It would be very difficult to deal with. I am not sure as to how we are going to do it. We are giving it some thought, and we would be required, as you know, to draft the regulations for public comment and for implementation by the Department, once the act was put into force.

But it will be a difficult matter to deal with.

Senator LAUTENBERG. I think it will be difficult. Again, the question of security of the arrangement. I am not now talking about national security. I am talking about the business security.

Mr. OLMER. Could I make a comment, Senator, regarding the reliability question? A lot of what the business community said in testimony before this community, as well as in meetings that I have had both here and abroad is, I think, to a certain extent anecdotal in character. Surely, no one would deny that there has been an effect on the question of reliability of American businesses as suppliers, but I don't know the dimension of that effect, and I don't think anybody really does. We have seen a lot of talk about it, but I would point out that talk is generated largely since the Soviet pipeline sanctions.

If you look at the state of our regulations on the control of international trade, we have reached out extraterritorially many times. We would not be able to administer a program of export controls for human rights purposes, for antiterrorism purposes, for antiboycott purposes without affecting the question of reliability of the American supplier as a businessman. We simply couldn't do it.

The question comes in the opening remarks I made. You sort of have to bite the bullet. And you want to exercise leadership in areas which you believe are important to the national interest. We are going to have to pay the price for it. We are trying to limit that price to a rational extent, but there is going to be a price.

Senator LAUTENBERG. I agree with the general proposition that there are some risks and there are some tensions, and so forth, but the objective here is to reduce those to as few cases as possible and to permit our business community to get out there and aggressively pursue the business that results. Regardless of the character of those denied—the fact is, we are talking about a lot of jobs at a time when we, in our Nation, need as many jobs as possible—that are denied whether it is only a $1 billion worth or whatever. I am not making light of that relatively small percentage, but it does get expressed in these amounts in the job area.

I see my time is up. Thank you very much.

Senator **Heinz**. Senator Lautenberg, before I turn to Senator Proxmire, let me just say on the 270-day question you were asking our distinguished witnesses, my understanding is that the reason that was in the contract sanctity provision for agricultural products, is that has to do with the growing cycle, and the growing cycle of computers and computer contracts is not keyed to the solstice or any other natural events that we have been able to get positive correlation on, and the question is a very good one. The answer doesn't fall into exactly that category.

Senator **Mattingly**. May I make a comment about the growing season? [Laughter.]

I think if Senator Lautenberg and myself, I think if we solved delivery times on equipment like that, you would think it was growing season; am I correct?

So you just can't conjure up one out of the back end of a warehouse. [Laughter.]

Senator **Heinz**. Senator Proxmire.

COST SAVINGS PASSED ON TO CONSUMERS

Senator **Proxmire**. Mr. Olmer, I asked before I left, a question for you, and I would like to see if you could answer me. Current law requires at least 75 percent of cost savings be passed on to consumers before domestic oil can be exported.

Why are you recommending doing away with that provision?

Mr. **Olmer**. Well, what we are recommending is doing away with the Export Administration Act provision regarding the restraint of the export of Alaskan crude. The particular provision about 75 percent cost savings is a provision that couldn't be met. We have no means of making any determination as to cost savings that would be——

Senator **Proxmire**. Well, the whole justification for selling Alaskan oil to Japan is that there would be a cost savings, and instead, we could bring in oil elsewhere to compensate for, and the argument is that cost saving that would come in from OPEC, or wherever, Mexico, or wherever, that that saving should be passed on to the consumer. And the law provides that, and you would knock that out.

Mr. **Olmer**. Well, the several other acts of Congress that would prohibit the export of crude oil contain a requirement that the President make a national interest determination. And it is my judgment that that national interest determination embodies a determination of consumer benefit. I would point out that there has been no decision by the administration regarding the export of Alaskan crude to Japan, much less an interest expressed by the Japanese to purchase Alaskan crude.

What we are trying to do is clean up an act that I think has been abused by tacking onto it all manner of things that don't belong in the Export Administration Act. And I again would point out that there are at least three other provisions of Congress which would prohibit the export of crude oil, and each of them contains a requirement that the President must make a national interest determination, if he decides to authorize the export.

Senator **Proxmire**. I would just like to do what I can, whoever the President is of the United States, to see that the determination is based on some kind of factual finding, and that he can show there is a saving and that saving—as I say that law provides that saving go to consumers.

If you can't establish that, it seems to me that would be a weakness in any argument that we should export oil.

Let me ask you this: I understand from the testimony that over 31 million barrels of Alaskan oil has been added to the strategic oil reserve. And that oil is pumped out of grounds in Alaska, transported to Louisiana and pumped underground?

Mr. **Olmer**. I don't have an answer for that, Senator. I will be glad to provide it for the record.

Senator **Proxmire**. Well, I understand that is the case, and it seems to me absolutely ridiculous. It would seem to me the oil in Alaska is just as strategic to us as if it were in Louisiana.

Mr. **Olmer**. It would be.

Senator **Proxmire**. We can lose Alaska, but we could also lose Louisiana. [Laughter.]

Mr. **Olmer**. I wouldn't want to do that. [Laughter.]

Well, there are times when I might feel that way, but——

Mr. Dam, testimony before the committee shows that while we prohibit certain exports to the Soviet Union, our Cocom partners, particularly Japan, make the sales. And the result is that the Soviet Union gets the technology; we lose the sales; the Japanese companies get the profits and further penetrate our domestic markets. And it is a vicious cycle.

COCOM NEEDS TO BE STRENGTHENED

Can we agree that Cocom is pretty much of a joke at present and that it needs to be greatly strengthened?

Mr. **Dam**. I would certainly say it needs to be greatly strengthened, and I think we are getting a good consensus among our allies on that. There was one high-level meeting, and a good deal of work is being done, and another high-level meeting at the end of this month to work on that objective. And of course, we underscore that objective in our draft proposal.

Senator **Proxmire**. Let's be specific on that as much as we can. How much funding? How much upgrading of staff? What kind of Cocom do we want specifically?

Mr. **Dam**. Well, we certainly want to do those things. That is what we are talking about. We have not had an agreement on the exact number of staff, for example, but that is an objective, I agree with you.

Senator **Proxmire**. Right now it is very, very small, isn't it?

Mr. **Dam**. Yes, indeed.

Senator **Proxmire**. How big is it? How many people do they have working for Cocom?

Mr. **Olmer**. There are two people, Senator, provided by the——

Senator **Proxmire**. Two?

Mr. **Olmer**. Two people provided by the United States and a director, who is provided on loan from the Italian Foreign Ministry.

Senator **Proxmire**. So there are three people, altogether?

Mr. **Olmer**. A minimum of three people.

Mr. **Dam**. I am informed that the Secretariat is high as 110 people.

Mr. **Olmer**. I referred to people from the United States, Senator.

Mr. **Dam**. Excuse me, under 10.

Senator **Proxmire**. Under 10. It could be three.

[Laughter.]

Mr. **Olmer**. It could be one.

Mr. **Dam**. Senator Proxmire, I completely agree with you that we have to strengthen Cocom. There is no question about it.

Senator **Proxmire**. Again, it would be helpful if you could give us as much specific detail as you can, because the rhetoric is fine, but Cocom is right at the problem we have here. I think we all agree that we have to restrain the technology sales to the Soviet Union, and we have to find a way of getting cooperation.

Mr. **Dam**. Could I add a bit? We should know more after this meeting at the end of April. On the other hand, we have to recognize that the real manpower is in the national agencies, and all the people in the world in a Cocom international Secretariat won't make any difference, unless we can get that consensus from our allies.

Senator **Proxmire**. I couldn't agree with you more, and that would be my next question. How much hope is there that we can get Cocom members to agree to a common policy with teeth?

Mr. **Dam**. I think we are making a lot of progress on that. I don't know whether Mr. Olmer would like to comment on that.

Mr. **Olmer**. We are making some progress. We have worked at it very hard over the last 18 months, and we have achieved some specific results that are to be applied.

Senator **Proxmire**. Such as?

Mr. **Olmer**. I would rather not discuss them openly, but I would be happy to talk to you privately about them, Senator. But in general, we have seen agreement reached on expanding the control of certain new technologies that we believe need to be placed under control, and it took a lot of argumentation. It took a lot of time for us to develop a case, but we seem to have reached agreement within Cocom, and we think that is to be applauded. It is going to be a very effective contribution. On the other hand, we have not had as great a degree of success in other elements of arguing for additional controls on certain technologies.

PAYING COST OF JAPANESE DEFENSE UMBRELLA

Senator **Proxmire**. Secretary Dam, do we have any real leverage with the Japanese here? Don't we pay the costs of their defense umbrella, and shouldn't we say, if they insist on selling technology to the Russians that we would reduce that defense umbrella for Japan?

Mr. **Dam**. Well, the question of the defense umbrella with Japan is a rather complicated one. Thus far, we have been working with them toward improving their defense capability. Now they have added to their defense budget quite substantially, to the point where they have basically no increase in other governmental expenditures, and we all know what kind of debate one gets into in a country when one gets into a question like that. They have agreed to provide, under a definition of rules and missions, protection of the in air and sea lanes out to 1,000 kilometers—it's either kilometers or miles—and we believe we are making progress on that. We, of course, have an interest in the Pacific. Our fundamental interest is to protect the interest of the United States of America. And that is the reason we have forces in the Pacific. So that I think we might be in danger of cutting off our own nose, if we were to say that because the Japanese did something we didn't like, we were going to withdraw from that part of the world.

Senator PROXMIRE. Yes, but the disparity is perfectly enormous in relationship to gross national product. The Japanese provide what, 1 percent or less than 1 percent?

Mr. DAM. It is on the order of 1 percent. I don't have it in my head.

Senator PROXMIRE. One-sixth of what we do. We provide 6 or 7 percent. We provide so much more in this country. It seems to me we would have a strong argument. I appreciate your position. After all, it is important for us to keep Japan free of the Soviet Union, as it is for Europe, but it still seems to me we should have some leverage.

Mr. DAM. I do think that the new Japanese Government understands the problem and has shown a willingness and intention to increase their defense capability.

Senator PROXMIRE. Thank you.

Senator HEINZ. Senator Proxmire, thank you very much.

I would like to come back to sanctity of contracts for a moment. As has been pointed out, we have a law, part of the Commodity Futures Trading Commission legislation that provides for a 270-day period of sanctity of contract for agricultural products without any saving clause to the President; isn't that right?

Mr. DAM. It has the clause Senator Mattingly was referring to involving the national emergency.

Senator HEINZ. Yes, but it doesn't have the rather lower standard that you have in your administration bill, namely, overriding national interest.

Mr. DAM. That is partially correct. It's a different standard. It refers to different kinds of situations.

Senator HEINZ. I understand. Now my further understanding is that the administration did not oppose that amendment in Congress; am I correct?

Mr. DAM. The administration signed the statute.

Senator HEINZ. Yes, but I am also told that the administration at no point ever expressed verbally or in writing their opposition to that proposition.

Mr. DAM. I am not entirely sure about that, because it was offered and passed unanimously within about 2 minutes, as I recall.

Senator HEINZ. Well, it was in legislation that went to conferences. You had plenty of time to consider it before it got actually to conference.

Mr. **Dam**. I would have to review the record on that. I am not certain.

Senator **Heinz**. I wish you would. I don't think we have a sanctity of contracts provision in this legislation. Obviously, you want something in there.

I think we can achieve a consensus probably on something that is a little stronger than what you have got, maybe not go as far as some of us may want, but I think it is going to be a little stronger, and we urge you to work with us on that.

Mr. **Dam**. I would be pleased to do that.

Senator **Heinz**. Let me turn to foreign policy controls. In your discussion with Senator Proxmire, you were talking about Cocom and the effectiveness or ineffectiveness of it. Cocom, for the most part, has to do with the implementation of national security controls on exports. We do, by contrast, consider foreign policy export controls to be a part of the President's foreign policy arsenal and have used these kinds of controls, as you documented in your testimony, repeatedly over the past few years from—everything from human rights violations to the invasion of Afghanistan and the military crackdown in Poland, and so forth.

Can you envision a time when foreign policy controls are made multilaterally, perhaps even administered by Cocom, so that they are more effective?

MULTILATERAL FOREIGN POLICY CONTROLS

Mr. **Dam**. Let me break that down into two parts. First, whether I would basically find them made multilaterally, and then I'll go——

Senator **Heinz**. Or more multilaterally.

Mr. **Dam**. I could conceive of that happening in some particular areas under the framework of the United Nations or something of that character—in the human rights area, or with respect to apartheid or something of that character. I wouldn't think that we would want to promote organizations whose sole purpose was to control international trade. Therefore, I think——

Senator **Heinz**. I used the term, "allies," by which I mean NATO allies and Japan.

Mr. **Dam**. I think in certain areas that would be a good idea. As a matter of fact, we are now working with our allies on the whole question of what our policy should be toward the Soviet Union on East-West trade. But I have to tell you that many of our allies object to the notion of expanding Cocom for that purpose. I think it's putting the cart a little bit before the horse to leave you with the idea that we need a new organization. I think what we need is a common policy. Once we have a policy, we have the manpower in the NATO governments to administer the controls.

Senator **Heinz**. Let me ask you about a common policy. To what extent have you found that our allies are willing to make concessions to help us, help coordinate with us when we impose foreign policy controls?

Mr. **Dam**. Perhaps, the historical examples of that could be given by Mr. Olmer. But that is one of the things that is being discussed right now in a number of studies that are being carried on as a result of some arrangements that were worked out last fall at the time that the pipeline sanctions were lifted, that included studies within the OECD, and within the NATO. There are other diplomatic contacts being make working toward such a common policy. And there are a lot of difficulties in arriving at that common policy, but I do think we are making substantial progress. We will know more when these studies are completed.

Senator **Heinz**. But in sum, I gather you have a long way to go, even on something so modest as getting our allies to promise not to take advantage of future U.S. foreign policy controls, just to garner more exports to the Soviet Union or some other export market.

Mr. **Dam**. I wouldn't put it quite that way, but I do agree that we have quite some distance to go. I don't think they are trying to consciously take advantage of our export controls. I think there is an honest difference of opinion about how important——

Senator **Heinz**. Would the Caterpillar——

Mr. **Dam** [continuing]. The controls would be——

Senator **Heinz**. Would the Caterpillar Tractor Co. agree with you vis-a-vis Komatsu?

Mr. **Dam**. I certainly would agree with them that the Japanese have benefited by the controls.

Senator **Heinz**. My question is not whether you would agree with them, but whether they would agree with you.

Mr. **Dam**. What I was saying was that, obviously, where there is a difference of view—and we impose controls, but our allies do not—firms in those countries will have an advantage. All I was suggesting was that there was nothing particularly pernicious about the individual companies. What they are doing is trying to sell their product, and what we would like to do is get a common policy, so these incentives are not there.

Senator **Heinz**. It sounds like we have a ways to go, though. Secretary Olmer.

Mr. **Olmer**. Cocom would not be the place in which foreign policy controls should be or could be administered. There would be, I believe, no support for that, even if the United States were to advance such a policy. Second, there has been an expression of support for U.S. foreign policies, more specifically, regarding the Soviet complicity in the events in Poland 1 year ago. The NATO Council of Ministers joined with the United States in a very strong expression of condemnation for Soviet complicity in that area, and the European Community did impose certain restraints on the importation of goods from the Soviet Union, and most recently, I believe, considered whether or not the restraints should be continued and agreed that they should be continued, and that it was an inappropriate time to lift them. They didn't agree with the full extent of controls that our Government imposed 1 year ago, but they did agree that certain measures were necessary.

Senator **Heinz**. I would like to turn now to a question of consultation and quick notification to Congress with respect to the kind of considerations set forth in section 6.

The current law reads in part,

> Whenever the President imposes, expands or extends export controls under section,—Section 6, Foreign Policy Controls—"the President shall immediately notify the Congress of such action and shall submit with such notification a report specify-

ing the conclusions of the President with respect to each of the criteria set forth and the nature and results of any alternative means attempted under subsection (d) and the reasons for proposing to expand a control without attempting such alternative means. And such report shall also indicate how such controls would further significantly the foreign policy of the United States," et cetera, et cetera.

NOTIFICATION TO CONGRESS 5 MONTHS LATE

Now do you take that to mean that the moment the President—and not later than the moment the President proposes to expand export controls that he shall submit a written report detailing the kinds of things that have to be considered under current law, or under our legislation determined? Is that what you take that to mean?

Mr. OLMER. Well, you have got me at last, Senator. [Laughter.]

If by at the moment, you mean at the moment his order goes forth, then I would say, no, I don't interpret the statute that way. If you mean that the administration should make every effort to notify Congress as soon as possible, I would agree that is so required.

Senator HEINZ. The statute reads "every possible instance shall consult with the Congress before" not every possible effort to report to the Congress later. That's not the way the statute reads.

Mr. OLMER. Well, I suppose we would then get into a semantic construction of what means at the moment.

Senator HEINZ. What does the word "whenever" mean? It means, among other things, contemporaneously, doesn't it, in this context? I don't see why there is an argument about it. I just want to be——

Mr. OLMER. It says immediately.

Senator HEINZ. Immediately notify the Congress.

Mr. OLMER. Well, let me say that the Congress was immediately notified. The report to which you refer, came 5 months later, for which apologies were tendered and should have been, but the fact is that the Congress, both the House and the Senate were notified almost immediately—or if you allow me a little flexibility in the term "immediately," were immediately notified. And I personally testified on several occasions, and the testimony is a matter of record, as to what the administration did. And staff offered to come up and brief staff of the Senate and the House on several occasions, and did.

Senator HEINZ. Secretary Olmer, that is quite right, but that is not the question—at least not answering the question I am trying to pose, which is this: The statute says you shall immediately notify and shall submit with such notification a report.

Now, I agree you have apologized for getting it down here a little late, 5 months. But just so we are clear on the meaning of the statute, don't you understand that the statute says that the report shall come with the notification, or not?

Mr. OLMER. Well, I agree that we were in arrears in not submitting a report.

Senator HEINZ. I see we will have to submit this to higher authority.

Mr. OLMER. No, I said that at the beginning. We should have submitted it earlier than we did.

Senator HEINZ. I'll say.

Mr. OLMER. But notification verbally and in writing was provided.

It isn't as if to suggest that you were caught unawares as to what the President had decided and when he decided it.

Senator HEINZ. Secretary Olmer, just so I—and I do think we understand that you are trying to make the best of what could have been a much better situation, but I can't believe there is any disagreement over the plain English of the existing law. I understand that you want to try and protect what has been done from criticism. I am not trying to criticize you for the very late submission of the report. That's not the point. The point is, how are we going to do it in the future? More importantly, the whole question is, before people jump in feet first to using foreign policy controls, what guarantees do we, as legislators, to our constituents and the people we all serve, including you, have that there is a thoughtful process which does make careful considerations and in some sense will meet the test.

> Government should provide a stable and predictable set of rules under which trade can take place, individual and corporate initiative as soon as possible from the uncertainties inherent in the ad hoc exercise of government authority. George Shultz, 1979.

That is what we are trying to establish here, is some more certainty, more predicability, more care.

In the time limit, let me just go to the last issue, which is import sanctions. Now your bill does provide new authority for import sanctions, their imposition against the violator of the Export Administration Act; is that correct, Mr. Olmer?

Mr. OLMER. Yes.

Senator HEINZ. My bill contains a similar, albeit it different provision. Since the introduction of my bill, it's been suggested that the provision should be extended to Cocom violations as well. Would you support that?

Mr. OLMER. No, sir. I would not, because—I pointed out that Cocom is a voluntary organization. We have an ability to influence the conduct of Cocom affairs, but it isn't an ability without any limitations. If we were to impose a legislative requirement of that character, I think that it would run the risk of losing Cocom, and I think the membership is more important than the issue added by that part.

APPLYING IMPORT SANCTIONS

Senator HEINZ. Now under the provisions of your bill, do you intend to have your import sanctions apply to both national security control and foreign policy control violations?

Mr. OLMER. National security only.

Senator HEINZ. And also do you intend to apply it to foreign companies violating our regulations, that is, largely by illegally exporting, or also to U.S. companies that don't comply?

Mr. OLMER. I think I had better be very careful about the answer I give. I hope that is not a change. Could you repeat the question?

Senator HEINZ. Do you intend it to apply to foreign companies violating our regulations, that is, largely by illegally exporting, or to U.S. companies that don't comply?

Mr. OLMER. Well, we will have to have a means of acquiring jurisdiction over the offender. I mean, in order to impose a penalty, you presuppose having jurisdiction. So the connectivity would have to exist between the company—you say a foreign company could be a subsidiary of the U.S. corporation. It could be a company that is a licensee or that has acquired U.S. technology for further export. So I think the answer would be, both situations would be contemplated, but the regulations, of course, are yet to be written.

Mr. DAM. The language provides that whomever violates our national security control may be subject to controls on the importation of its goods or technology to the United States. I think this is another instance in which the regulations will have to be more specific regarding exactly who might be caught in the net of this provision.

Senator HEINZ. Now you object to the provision in my bill, at least the way it is drafted, that directs the President to apply import controls against any country in which foreign policy controls have been imposed, even though we don't require across-the-board prohibition of imports from that country. We don't require, if you will, a kind of a mirror imaging of the export controls or the import controls. So there is a lot of flexibility there. And I am a little puzzled that you think it is too strong a sanction. Frankly, the goal in having that kind of provision in legislation is to try and get a balance between the penalties that people pay here. Right now when it's export controls, we all know who pays the economic price. It is the American worker. It is the American company. When imports are affected, it clearly is for the most part somebody else.

And I am, I suppose, puzzled by the fact that if import controls which hurt foreign businesses is too strong a sanction, why should export controls, which hurt U.S. businesses, be such a ready foreign policy tool?

Mr. DAM. First of all, Senator, the way your bill was drafted has led us to certain conclusions as to how it would be applied because it says whenever the authority is applied to exports the President shall prohibit all imports subject to such exemptions as specified, and the technologies that the President may proscribe. So the President may be able to carve exceptions out, but he basically would have to shut off imports from the whole country if, for example, he was imposing crime control restrictions or——

Senator HEINZ. That's not exactly the intention. You may be technically right that it may be interpreted that way. Let me put it to you in a different way then. Would you have any objection to statutory language that said to the extent that export controls are placed on a country an equivalent amount of import controls will be applied as well?

Mr. DAM. I don't know exactly how that would work. In the example I gave of crime control equipment and so forth, there would be a lot of practical problems. If what you're asking is, would we object to presidential discretion to impose import controls——

Senator HEINZ. I'm going a little further than that.

Mr. **Dam**. You're going further than that. I think that one would have to consider how that would actually work because I just don't see how the equivalence test would work in many situations.

Obviously if you're talking about the kinds of controls we impose on Libya and on North Korea and so forth, that's one thing. But if you're talking about all these other controls, say with regard to nuclear proliferation, I don't know exactly what we would do on the import side.

I think it would have to be a much more detailed provision. We would be glad to look at that with you, but our general view was that it wasn't wise to do this in the area of foreign policy controls because it sort of lays down the gauntlet to other countries. It's hard now to get them to share the general foreign policy objectives in some of these areas without then hitting them with the import controls too. Plus the fact, as you say, it just doubles the burden on businesses because it not only hits the exporters but it also hits those countries providing imports. So it's kind of a double whammy. And while I understand the motivation of getting away from the export control psychology and perhaps making it a little bit more undesirable in some cases to impose the export controls, it does have other deleterious effects.

Senator **Heinz**. It might make it less necessary to impose quite as much in the way of export controls by virtue of also having an effect by imposing some limited import controls and therefore hurt U.S. exporters a little less, if you will, spread the burden around a little more evenly.

I think I sense a willingness to try and work something out, but my time has expired and we can have some discussions on another occasion.

Senator Mattingly.

Senator **Mattingly**. Thank you, Mr. Chairman.

The subcommittee received testimony before about some Cocom members having exported items under the Cocom list to control countries without seeking prior Cocom approval. You just got through saying that the United States has limited authority in what it could do.

What has been or could be our response to a Cocom violation like that?

RESPONSE TO COCOM VIOLATION

Mr. **Olmer**. Well, one of the efforts we have underway in our negotiations in Cocom right now is to harmonize the enforcement mechanisms among the Cocom members. There is no unanimity. There is in fact relatively little similarity in the way in which many Cocom countries enforce Cocom regulations.

I point out again that Cocom is a voluntary organization. People adhere to Cocom regulations because they believe it's in their interest.

My concern about legislating Cocom or certain provisions of how Cocom should be managed is that it might lose some of the Cocom membership. So the degree of influence we have over Cocom member states is in convincing them that it is in our mutual interest to obey the restrictions. Until and unless they do, we have relatively little influence and authority over them.

In some cases, Senator, they are dependent—particularly Cocom countries—on U.S. technology and we would have some influence. As I pointed out earlier, that's getting to be the case less and less.

Senator **Mattingly**. Well, what value is it then?

Mr. **Olmer**. Well, because most of the time we find——

Senator **Mattingly**. It sounds like the IMF. We've got everybody running around and there's no way we can control them and what do we do with the IMF.

Mr. **Olmer**. Except that by and large Cocom states do adhere to the regulations. I shouldn't say by and large. It's by far the exception that they do not and I would point out that we appreciate that very much. It's a question of common recognition of mutual objectives.

Senator **Mattingly**. Are strong letters sent out with a harsh letter to follow or something?

Mr. **Olmer**. Not everyone agrees with U.S. interpretation of what is high technology and I would have to say I don't agree with U.S. interpretation of everything in our high technology list. I don't want to put myself in a section because I don't happen to agree with it. In that respect, I can see that we've got to do a better job of limiting this to what truly is high technology and convincing the Cocom member states that the residual really will impair their own national interest.

Senator **Mattingly**. I would say the high technology probably permeates our trade policy in this country going back to what Mr. Dam said about having a common policy, talking about being specific or more clarity, all those words are words that really apply to what we're trying to get at here in having something definitive and that's just a little bit off the subject, but we don't have a definitive trade policy in the United States. We're going to get one.

Mr. **Olmer**. I'm with you, Senator.

Senator **Mattingly**. Great. Well, you just stick with me because we're going to have one and it's going to be understandable. A lot of people have suggested the need to limit our export controls so that they do not extend beyond our own shores. To what extent would such a provision be an incentive for U.S. businesses to move their operations overseas to escape our export control provisions?

Mr. **Olmer**. I think that it would be an incentive for them to move offshore. I think that's one of the reasons that in the whole area of conflict of jurisdiction we find it necessary to apply some of our own laws beyond our own shores in order to reach out and obtain jurisdiction over U.S. companies and subsidiaries and licensees and so on.

Senator **Mattingly**. Just to come back for just a general statement about myself. I know we talk about the pipeline sanctions and we talk about reliability, and when we look at—whether it's been the export changes on the agricultural shipments to Russia, agricultural policy, or we look at the pipeline issue or we look at the multiagencies here in the United States handling trade policy, I think all that points up to the problem that we need to, as you now agree—that we need a real common, understandable, clear policy, and I think through this administration and a bipartisan effort that we should be able to get one. I think the people of our country deserve one. Thank you.

Thank you, Mr. Chairman.

Senator HEINZ. Thank you, Senator Mattingly.

Senator Lautenberg, do you have any questions?

Senator LAUTENBERG. Just a couple things, Mr. Chairman, if I might.

I think the continuing discussion about Cocom places us in a position that perhaps we can't support. I think an integral part of the administration's recommendation is that we encourage the call for negotiations to upgrade and coordinate Cocom and I think what we're talking about is a bit of a toothless tiger, and I'm surprised that as we have these discussions that we see the weaknesses of the process and, again, admittedly it's a very complicated thing—that it becomes one of what I think is the major elements of the developments of the administration's recommendation.

Aren't we, if not wasting a lot of time, I think the effort should be continued—I think it borders on the hypocritical, if you'll forgive me, if we have three people or less doing the coordination, and I recognize there are other agencies involved there, and also we're often at cross purposes. Our allies' view of what might be an appropriate response to an action by the Soviet Union or its affiliates is quite different than ours, and there is an aggressiveness about business coming out of other countries that I think sometimes makes us No. 2 in the race.

I just wonder why we're placing it, as I see it, the amount of emphasis that we do in the administration's recommendations on Cocom?

Mr. DAM. Well, because, Senator, I think the question is what is the alternative? What we want in the area of militarily critical high technology is to have a situation in which that technology does not go to the Soviet Union.

Now if we try to do it alone accomplish the job. We have to convince our allies. We haven't over the years been entirely successful in doing that.

As Mr. Olmer testified, on the whole, it's worked pretty well. But there are some marginal areas in which, whether it's because a lot of jobs are involved or whether it's because of a difference of view about the technology or whether our own lists are outmoded and don't reflect the current technological situation, there are disagreements.

Now we would like to strengthen Cocom, but the important thing is not Cocom as an organization; it is agreement upon what it is that's going to be controlled because controls are carried out by the national governments in any event.

Senator LAUTENBERG. I think, Mr. Olmer, didn't you bring that piece of sophisticated technology the last time you appeared before this committee from Radio Shack?

Mr. OLMER. I brought, on one occasion at any rate a set of "Speak and Spell" toys, sold by Texas Instruments.

Senator LAUTENBERG. It was very helpful to me by the way.

Mr. OLMER. And it's made in, I think, seven different languages and it has a microprocessor embedded within it. There are no controls on the export of that toy, but if it should break down and if a consumer or a consignee in one of those seven Cocom countries wanted to obtain a replacement part, he would need a license to have it exported from the United States to that Cocom country, and I think that that's not——

Senator **Lautenberg**. And the transshipment of something like that changes the character measurably and its ridiculousness was very helpful to demonstrate the point. Things that are declared technologically significant are often obsolete in this country. You talk about some computer technology—I remember one that came on the scene in 1965 and you can't give away that equipment today. But, again, before we get too far off the point here, the Cocom thing—and again, I recognize the difficulty, but I just think we have to pursue that if it's going to be an integral part of this recommendation. Otherwise, I think we ought to abandon the notion that that gives us any sense of comfort or relief and, again, more often, I think we're at cross purposes in trying to do business than we are in the kind of bilateral thing.

RESPONSIBILITY OF ENFORCEMENT OF LICENSE RESTRICTION

In terms of the enforcement side of things, Mr. Olmer, enforcement of license restriction, the testimony that I remember having heard here last time raised some question about the Commerce Department's ability to provide the enforcement, and I don't remember you vigorously defending your Department's ability to do it. Customs seemed to be better structured for it and so forth.

Your recommendation on that, I assume, is the status quo and you don't see a way to improve that or change it in any way.

Mr. **Olmer**. I don't think that there should be any adoption made of Senator Heinz' proposal and Senator Nunn's proposal that would transfer legislative responsibilities from Commerce to Customs.

I do think that we need to work better as two agencies to assure there are no discontinuities in the way in which we go about our respective missions. There are differences between us in the kind of responsibility we have. I point out that the Commerce Department has had a criminal enforcement responsibility for a long time. Long before the Customs Services of the United States ever heard of the Export Administration Act, the Department of Commerce was making an effort—some would say not as vigorously as required—but others would say that an effort was being made to apply the enforcement authorities available to it.

I think that we have to work administratively to develop an appropriate memorandum of understanding and there may be areas that suggests itself to legislation in which we will work with you over the coming months . But basically, we believe the responsibility belongs in the Commerce Department for the enforcement of the act and it's the only agency in the Government that has one mission relative to enforcement and it's not going to change next week to control drugs and it's not going to change the week after to be concerned with illegal immigration. It has and will remain purely and simply enforcement of the Export Administration Act. I think we're doing a hell of a good job of beginning to put into place an organization to do just that, and I very much appreciate the efforts of the Senate most recently approving an authorization for additional resources in that area.

Senator **Heinz**. The record will also note the modesty with which you evaluate your own performance.

Senator **Lautenberg**. I was going to ask, Mr. Chairman, for the other endorsers of a hell of a good job thing. I heard it from the Commerce Department but I didn't hear any other testimony to that effect, but I'm sure you're right.

Mr. **Olmer**. Senator, could I make a remark to your earlier question with respect to Cocom and technology? Leaving aside the question of Cocom for just a minute, I'd like to inject a thought that we have to be increasingly concerned about non-Cocom sources of technology. That is no small problem now and it gives every promise of being an enormously difficult problem and I mean by that both nations with whom we have very close trading relationships and those nations with which we're not that close.

Senator **Lautenberg**. That's a very tough problem, I agree with you, and that's why I'm sure that that mechanism—I don't want to oversimplify it, but the fact is that to rely on that or depend on that as a major source for control I think gives us a sense of security that doesn't exist and we ought to look at the other problems of controlling that technology. It's a question that it's so easily duplicated in many instances and just picked up, plagiarized, etc., which creates a problem we have to work with.

The enforcement thing, though, is one where I would disagree with you in terms of it doesn't follow or rarely occurs that the people who write the rules enforce them. We see any number at the local and national level of the people who write the rules and then another one who has the responsibility of enforcing them.

I saw something recently—and I was trying to think of the case specifically—you may be aware of it—shipments made by a company complaining bitterly that their licenses—it had to do with the technology of electronic circuitry, and where the products stayed on the dock for months while they were trying to get the license process squared away. Do you remember the specific instance?

Mr. **Olmer**. You may have been referring to Project Exodus. You're not talking to one of the world's greatest supporters of that, so I pass on making a comment.

Senator **Lautenberg**. I'll get it for you because I think it demonstrates a particular weakness in the system as it exists.

Mr. **Olmer**. Well, we are responding right now. I can certify that the Commerce Department is responding in a matter of days to inquiries made at points of exit regarding seizures by the Customs Service of products which they suspect are going to be violations, substantive or technical. There have been instances in which typographical errors on a shipping declaration has resulted in detention. There have been others where national security items have been involved.

The problem is that the technical expertise may be difficult and you've got to determine whether or not the item seized is appropriate. When this program got off the ground about a year ago, the response was rather marginal and there was an enormous search of seizures and detainments and the response time has vastly improved right now and very few exporters I think have legitimate causes for complaint for that reason. They've got some other legitimate causes for complaint that I would be happy to go in with you.

Senator **Lautenberg**. Thank you, Mr. Chairman.

Senator **Heinz**. Thank you very much, Senator Lautenberg.

Gentlemen, thank you. Secretary Dam and Secretary Olmer, we appreciate your testimony and I think we will be working quite closely with you to try to resolve some of these issues and I'm sure we can.

We have a panel of witnesses, Mr. Howard Marlowe, associate director of the Department of Legislation, AFL-CIO; Mr. Edward L. Merrigan, counsel, National Association of Recycling Industries, Inc.; Mr. Irving M. J. Kaplan, representing the Ferrous Scrap Consumers Coalition; and Mr. Steven Kaplan, first vice president, Institute of Scrap Iron & Steel, Inc.

Before we begin, I just want to observe for the record that Senator Proxmire was asking me if Irv Kaplan and Steve Kaplan were related and I explained to him that one was in sales and one was in purchasing here and that as far as I know there's no known connection, just a coincidence.

Mr. **Kaplan**. That is correct.

Senator **Heinz**. Very well. With that difficult problem out of the way, let me ask Mr. Marlowe to please proceed.

STATEMENT OF HOWARD MARLOWE, ASSOCIATE DIRECTOR OF THE DEPARTMENT OF LEGISLATION, AFL-CIO, ACCOMPANIED BY MARK COOPER, DIRECTOR OF RESEARCH, CONSUMER ENERGY COUNCIL; AND JACK GOLDSTEIN, VICE PRESIDENT AND ECONOMIST, OVERSEAS SHIPHOLDERS GROUP

Mr. **Marlowe**. Thank you very much, Mr. Chairman. Accompanying me today on behalf of the Coalition to Keep Alaska Oil on my immediate right is Dr. Mark Cooper, director of research for the Consumer Energy Council; and farther to my right, Jack Goldstein, vice president and economist for the Overseas Shipholders Group.

Senator **Heinz**. Mr. Marlowe, let me just make a comment I forgot to make a moment ago. We asked all witnesses to keep their remarks under 10 minutes, and so we have one more panel, and the Chair will observe with the gavel the use of the limitation of 10 minutes.

Mr. **Marlowe**. I'll be happy to comply, Mr. Chairman.

RESTRICTIONS ON EXPORT OF ALASKA OIL

As you know, the Export Administration Act contains in section 7(d) restrictions on the export of Alaska oil. Those restrictions date back actually to 1973 when Congress passed the Trans-Alaska Pipeline Authorization Act. At that time Congress made a decision that the primary purpose for the use of oil located on the North Slope of Alaska should be for domestic purposes.

The provisions of section 7(d) were added in 1977 and amended in 1979. They make it clear that exports of Alaska oil should occur only if they benefit the Nation and result in lower cost to American refiners and consumers.

In addition, they require the President to consult with and seek the approval of Congress prior to any export of Alaska oil.

For a nation whose economy depends on oil, existing in a world whose oil supply is finite and at times unstable, the restrictions of section (d) make sense.

Alaska oil plays a vital role in our economy. We use it in our cars. We use it in our homes. It helps to strengthen our national security by reducing our reliance on imported oil.

In time of national emergency, the availability of large, secure supplies of Alaska oil helps to assure that our economy and our Armed Forces will have all the oil they need. It has provided jobs, not only in the maritime industry but in the steel industry and auto industry as well as many other sectors of the economy, while it has helped to maintain the vitality of our maritime industry as well. It has also helped to maintain the vitality of many U.S. ports and the economies of the communities and regions they serve.

Most of all, Alaska oil benefits American consumers. Its delivered price is at or below the level of comparable grades of domestic or imported crude oil. In addition, each barrel of Alaska oil produces over $6 in revenues for the Federal Government, more than $5 in revenues for the State of Alaska, and over $5.50 in profits to the producing oil companies.

It is the height of folly to suggest that Americans give up access to the secure source of Alaska oil and become more dependent on imported oil. Nevertheless, that is the likely result if the restrictions of 7(d) are not extended beyond their expiration date of September 30 of this year. Many of those who urge this reckless course recommend that we export Alaska oil to Japan in exchange for Mexican oil. But there is nothing in section 7(d) that prohibits that kind of transaction. All section 7(d) does is to provide sound assurance that any export or swap must benefit the broad interests of the Nation, rather than any parochial interest.

There are those who would terminate section 7(d) on the grounds that it somehow restricts our ability to establish fair trade with Japan. In truth, the removal of the restrictions would actually aggravate trade problems with Japan.

The administration testified just before us that if section 7(d) is removed, there are other sections that would still restrict the export of Alaska oil. I think that is correct. However, those statutes are quite different from the provisions in section 7(d). For example, provisions in the Trans-Alaska Pipeline Authorization Act which I referred to earlier do not require that an export or swap of Alaska oil result in any benefit to American consumers. There is absolutely no consumer benefit protection contained in that act or any other act to which the administration refers.

In addition, the Trans-Alaska Pipeline Authorization Act does not require that any such arrangement be made pursuant to a contract that can be terminated in the event of a U.S. oil supply disruption. Thus, this is an essential national security protection provided by section 7(d).

In addition, no other statute on the books gives Congress the full opportunity to review and approve a proposed export of the kind provided in section 7(d) of the Export Administration Act.

Mr. Chairman, in the final analysis, it is the responsibility of those who oppose section 7(d) to demonstrate to Congress and the American people how the restrictions on the export of Alaska oil have harmed the national interest. It is their responsibility to produce evidence that section 7(d)'s protection of national consumer interests have prevented an oil export that would benefit the American people, and it is their responsibility to prove that the export restrictions have been detrimental to the energy security and defense interests of this country.

Mr. Chairman, this is a burden of proof which has proved too weighty for the opponents of section 7(d). The Coalition to Keep Alaska Oil urges this subcommittee to extend the Export Administration Act provisions that place reasonable restrictions on the export of Alaska oil.

Mr. Chairman, if I've been within your allotted time limit of 10 minutes, I'd like to defer to either Dr. Cooper or Mr. Goldstein to add any additional comments that they may have.

[Complete statement and response to written questions of Senator Heinz follows:]

TESTIMONY OF HOWARD D. MARLOWE, ASSOCIATE DIRECTOR OF LEGISLATION, AFL-CIO ON BEHALF OF THE COALITION TO KEEP ALASKA OIL BEFORE THE SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY OF THE SENATE COMMITTEE ON BANKING AND URBAN AFFAIRS

April 14, 1983

We thank the Subcommittee for this opportunity to express the views of the Coalition to Keep Alaska Oil. The membership of our Coalition, which is listed in an attachment to this statement, is broad-based. We are composed of consumer, labor, industry and agricultural organizations, each of whom strongly supports an extension of the current restrictions on the export of Alaska oil.

Crude oil is a precious domestic resource. Recognizing this fact, Congress included restrictions on the export of Alaska oil when it adopted the Trans-Alaska ipeline Authorization Act in 1973. At that time, Congress established a clear-cut ational policy that the primary use of oil from the North Slope of Alaska was to be or domestic purposes. Congress reaffirmed and strengthened that policy in 1977 and gain in 1979 by including oil export restrictions in the Export Administration Act. hese restrictions expire on September 30, 1983.

Under Section 7(d) of the Export Administration Act, the President must nd that exports of Alaska oil are in the national interest, will not diminish the tal quantity or quality of crude oil available in the U.S., will result in lower oil quisition costs to refiners, will result in at least 75 percent of the cost savings ing passed on to consumers, and will be made pursuant to contracts which may be termi- ed if U.S. crude oil supplies are interrupted, threatened or diminished.

The provisions of Section 7(d) are eminently reasonable. They make it clear that exports of Alaska oil should occur only if they benefit the nation and result in lower costs to American refiners and consumers. In addition, they require the President to consult with, and seek the approval of, Congress prior to any export of Alaska oil. The oil located on the North Slope of Alaska is a vital American resource that is being, and should continue to be, used to benefit our economy. No export of this oil should be allowed to occur unless it is in the national interest and unless it will benefit American consumers. For a nation whose economy depends on oil, existing in a world whose oil supply is finite and at times unstable, the restrictions of Section 7(d) make sense.

It is important that Congress appreciate the vital role Alaska oil plays in our economy. In 1982, for example, more than 1.6 million barrels of North Slope crude were sent through the Trans-Alaska Pipeline each day. Almost half of that total was sent to refining centers on the West Coast, Alaska and Hawaii. The remainder was sent to refineries on the Gulf and East Coasts, the U.S. Virgin Islands, and Puerto Rico. Alaska oil is used to put gasoline in our cars, to heat our homes and to fuel our factories. From 1980 through 1982, 31.4 million barrels of Alaska oil were used to fill our Strategic Petroleum Reserve.

Alaska oil has helped to strengthen America's energy security. Since 1973, the U.S. has sought to increase national energy self-reliance. That policy has already seen a dramatic reduction in our reliance on imported oil and an increase in our capacity to develop and make use of domestic supplies of energy. Alaska oil has played an important role in this success.

In time of national emergency, the availability of large, secure supplies of Alaska oil help to assure that our economy and our Armed Forces will have the oil they need. The use of American ships to carry Alaska oil has helped to assure the availability of U.S.-flag ships with trained seagoing manpower. These resources are vital to our economy in both times of peace and hostilities. Alaska oil has also provided jobs in the steel and auto industry as well as many other sectors of the economy, while it has helped to maintain the vitality of our maritime industry, as well. It has also helped to maintain the vitality of many U.S. ports and the economies of the communities and regions they serve.

Alaska oil also benefits American consumers. Its delivered price is at or below the level of comparable grades of domestic or imported crude oil. For example, in East Coast markets, Alaska oil has been selling for approximately $3.80 per barrel less than imported oil. Each barrel of Alaska oil produces over $6 in revenues for the Federal government, more than $5 in revenues for the State of Alaska, and over $5.50 in profit to the producing oil companies.

The export restrictions contained in Section 7(d) simply require the President and Congress to weigh the many benefits gained from the domestic use of Alaska oil against whatever benefits might accrue from an export of that oil. They are based on the fact that Americans have borne hardships and enormous costs as a consequence of our national dependence on imported oil. The difficulties created by oil shortages have created strong support among the American people for energy programs that enable the U.S. to conserve energy and expand the supply of domestic energy resources.

It is the height of folly to suggest that Americans give up access to the secure source of Alaska oil and become more dependent on imported oil. Nevertheless, that is the likely result of removing the restrictions contained in Section 7(d). Many of those who urge this reckless course recommend that we export Alaska oil to

Japan in exchange for Mexican oil. But the provisions of section 7(d) in no way prohibit such an arrangement. All they do is provide sound assurance that any export or swap benefit the broad interests of this nation, rather than any parochial interest. In fact, there is considerable doubt that Mexico could increase its production in an amount necessary to offset our loss of Alaska oil. And an increase in Mexican oil exports to the U.S. would be contrary to that country's policy of limiting its dependence on any single buyer of oil. In addition, [illegible] does not take a sufficient quantity of Mexican oil to swap for the Alaska oil it would receive. Thus, it is likely that a substantial portion of the additional oil imports needed to replace Alaska oil would come from the Middle East--the very source of supply on which we are trying to reduce our dependence. Section 7(d) assures that Congress would be directly involved in any decision regarding Alaska oil that might result in an increased reliance on imported oil.

There are those who would terminate Section 7(d) on the grounds that it somehow restricts our ability to establish fair trade with Japan. In truth, the removal of the restrictions contained in Section 7(d) would actually aggravate trade problems with Japan. Of course, exporting Alaska oil to Japan would give that country a vastly improved balance-of-trade with the U.S. But this reduced trade deficit would also greatly reduce pressures for a more realistic valuation of the Yen. Over the last two years, the sharp drop in the value of the Yen has increased the inflow to the U.S. of manufactured goods from Japan, causing job losses and the serious disruption of U.S. manufacturing industries. The undervaluation of the Yen and the unfair trade policies of Japan must be addressed directly, not masked artificially by the export of a vital commodity. The export of oil, which is not labor intensive, instead of the export of much more labor intensive manufactured goods would be very costly to the U.S. in terms of jobs. Overall, the U.S. trade balance would not be helped by the export of Alaska oil since the exports would have to be replaced by imports. The likely higher price of the imported oil, coupled with payments for the use of foreign ships and the heavy cost of discontinuing use of U.S. ships would hurt our overall balance-of-payments.

Some proponents of terminating the restrictions of Section 7(d) argue that American security would be enhanced if Japan had access to the more secure oil supply offered by Alaska oil. Although it is not desirable for Japan to face the threat of oil blackmail, it is the U.S. which is the most likely target of oil blackmail because of its foreign policy responsibilities. It would be harmful to the interests of both Japan and the U.S. if American vulnerability to oil blackmail were heightened because of increased U.S. dependency on oil imports.

Similarly, proponents of terminating Section 7(d) argue that exporting Alaska oil to Japan might reduce the likelihood of joint energy ventures between Japan and the Soviet Union. We agree that any such venture would be contrary to the interests of the U.S. However, it is unlikely that the amount of oil available to Japan from the North Slope fields (which are expected to peak at 1.8 million barrels a day in 1988) would provide any significant influence on such a Japanese decision. In addition, efforts to prevent the Japanese from becoming dependent on the Soviet Union for energy should not employ the tool of increasing the energy import dependency of the United States.

Section 7(d) of the Export Administration Act was adopted because Congress wisely believed that other statutory restrictions on the export of Alaska oil were inadequate. For example, the provisions of the Trans-Alaska Pipeline Authorization Act (which became part of the Mineral Leasing Act) do not require that an export or swap of Alaska oil result in any benefit to American consumers nor do they require that any such arrangement be made pursuant to a contract that can be terminated in the event of a U.S. oil supply disruption. Thus, if Congress does not extend the provisions of Section 7(d), an export of Alaska oil could take place that would not provide cost benefits to American consumers and that would leave the U.S. vulnerable during an emergency. In addition, if Section 7(d) is not extended, Congress will be denying itself a full opportunity to review the facts and proposed benefits of an export of Alaska oil.

In the final analysis, it is the responsibility of those who oppose Section 7(d) to demonstrate to Congress and the American people how the restrictions on the export of Alaska oil have harmed the national interest. It is their responsibility to produce evidence that Section 7(d)'s protection of national and consumer interests have prevented an oil export that would benefit the American people. And it is their responsibility to prove that the export restrictions have been detrimental to the energy security and defense interests of this country. This, Mr. Chairman, is a burden of proof which has proved too weighty for the opponents of Section 7(d).

The circumstances which led Congress to enact Section 7(d) in 1977 remain as compelling today as they were six years ago. Although the recession has created a temporary respite from the pressures exerted by the OPEC cartel, the need to reduce U.S. dependence on imported oil must remain a vital concern of our national policy. The shortsighted proposals to remove the Alaska oil export restrictions of the Export Administration Act would endanger the nation's economic and defense security and harm American consumers by importing higher priced oil. Therefore, the Coalition to Keep Alaska Oil urges this Subcommittee to extend the Export Administration Act provisions that place reasonable restrictions on the export of Alaska oil.

Organizations involved in the Coalition to Keep Alaska Oil

AFL-CIO
American Institute of Merchant Shipping
American Maritime Association
American Maritime Officers Service
Americans for Indian Opportunity
Carpenters, International Brotherhood of
Citizens/Labor Energy Coalition
Consumer Energy Council
Consumer Federation of America
Dillingham Ship Repair
International Longshoremens' and Warehousemens' Union
International Organization of Masters, Mates & Pilots, ILA, AFL-CIO
Joint Maritime Congress
Labor-Management Maritime Committee
Ladies Garment Workers, International Union
Machinists, International Association of
Marine Engineers Beneficial Association, District #2
Maritime Institute of Research and Industrial Development
National Farmers Organization
National Farmers Union
National Marine Engineers Beneficial Association
National Maritime Council
National Maritime Union, AFL-CIO
Northville Industries
Ogden Marine
Port of Portland
Seafarers International
Shipbuilders Council of America
Sonat Marine
Sun Company, The
Transportation Institute
United Auto Workers
United Steelworkers of America

American Federation of Labor and Congress of Industrial Organizations

815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5000

EXECUTIVE COUNCIL

LANE KIRKLAND PRESIDENT
THOMAS R. DONAHUE SECRETARY-TREASURER

John H. Lyons
S. Frank Raftery
Glenn E. Watts
Angelo Fosco
Lloyd McBride
Wm. W. Winpisinger
John DeConcini
Joyce D. Miller
Frank Drozak
Richard I. Kilroy
William H. Bywater

Thomas W. Gleason
Murray H. Finley
Sol C. Chaikin
Charles H. Pillard
Kenneth T. Blaylock
William H. Wynn
Wayne E. Glenn
John J. Sweeney
James E. Hatfield
Vincent R. Sombrotto
Marvin J. Boede

Frederick O'Neal
Albert Shanker
Edward T. Hanley
J. C. Turner
Alvin E. Heaps
John J. O'Donnell
Robert F. Goss
Douglas A. Fraser
Barbara Hutchinson
Gerald W. McEntee
Patrick J. Campbell

May 6, 1983

Honorable John Heinz
Chairman, Subcommittee on
International Finance
and Monetary Policy
Committee on Banking, Housing
and Urban Affairs
Washington, D.C. 20510

Dear Mr. Chairman:

The following is a response to your letter of April 15th:

Question: Does the AFL-CIO favor reducing presidential authority to impose foreign policy export controls?

Answer: We would not reduce presidential authority to impose export controls but we would favor making more explicit some of the uses of export control.

Question: Lane Kirkland has been outspoken in criticizing the transfer of critical technology to the Soviet bloc. In what ways in this regard has our export control system been inadequate?

Answer: The export control system has not been adequately concerned with some of the communications and computer technology that have applications beyond their civilian uses and have military applications as well.

Question: AFL-CIO President Lane Kirkland sent a letter to Secretary Baldrige last fall that was very critical of the Department's field hearings on the Export Administration Act. The letter in part said that the "non-Congressional public hearings in port cities to be chaired by business leaders who are members of the President's Export Council shows that this issue will not get an appropriate public hearing ... This group, whose interests tend to involve promoting exports more than any other goal, cannot provide a useful forum for the many issues involved in regulating exports." I tend to agree, and I think that this criticism greatly discredits not only those regional hearings, but also reveals a complete failure by the Commerce Department to fulfill its responsibilities of being the lead export administration agency of this Government. Perhaps in no more revealing way is the trade bias at Commerce demonstrated. Commerce Under Secretary Olmer rejected those objections, saying that the AFL-CIO had been invited to testify and had refused. Do you think that testimony from the AFL-CIO would have made much difference in those hearings, biased as they were in the way that they were organized?

Answer: The Commerce Department has not demonstrated much concern with the impact of exports on the domestic economy in terms of shortages, inflation and critical materials. Nor have they shown adequate concern of the impact of certain raw material imports on the health of domestic industries producing raw materials. We agree that the hearings were biased by the make-up of the committee.

The AFL-CIO has a number of concerns regarding the Export Administration Act in addition to the restrictions on the export of Alaskan Oil. I have enclosed a copy of the February, 1983 Executive Council resolution which lists the AFL-CIO concerns in this matter.

Sincerely,

Howard Marlowe

Howard Marlowe
Associate Director,
Department of Legislation

Statement by the AFL-CIO Executive Council
on
International Trade and Investment

February 21, 1983
Bal Harbour, Fla.

The United States faces unprecedented international trade and investment crises in 1983. "Beggar-thy-neighbor" policies have become the order of the day as other nations restrict U.S. products while pushing their own exports into the United States. The U.S. deficit in trade rose to a record $47.8 billion in 1982 and may double in 1983. The Reagan Administration ignores these facts and continues to make speeches about free trade.

No one disputes the vital importance of trade, but it is time also to recognize its frequent adverse impacts upon workers and industries and to take steps to balance the equities in the interests of all.

Labels of "free trade" and "protectionism" no longer serve any useful purpose. Tariff and nontariff restrictions are all but universal among America's trading partners, while American producers and marketers remain defenseless.

Too many Americans are losing jobs and too many companies are losing sales because the trade and investment policies of the United States ignore the realities of our time. This nation needs a policy to assure a healthy and diversified economy that offers work opportunities to all job seekers.

Some newly industrialized and developing countries curb imports into their markets while pushing more products into the U.S. to pay their debts. The International Monetary Fund, supported by the U.S. government, encourages these curbs by conditioning loans on these practices without concern for the adverse impact on the economic base of the United States and the entire free world.

Non-market and Communist countries, which generally have weaker economic systems and strong trade barriers, import only those products that they desperately need and frequently barter their exports in ways that make a mockery of free trade.

International Trade and Investment

Global firms and banks, both U.S.-and foreign based, are moving more and more technology and production facilities out of the United States into nations where laws and policies curb imports and subsidize exports. These firms and banks join with foreign nations to pursue private profit advantage regardless of the impact on U.S. jobs and production; all too often they collaborate with nations that are waging economic warfare against the United States.

Massive increases in the dollar's exchange value have cheapened and increased imports while inflating the cost and reducing demand for U.S. exports. Between January 1981 and January 1983, the dollar rose 29 percent against America's major trading partners. Yet, the Federal Reserve Board continues unrealistic tight-money policies that have helped to drive up the value of the dollar.

The AFL-CIO has consistently opposed policies and proposals that make matters worse, such as trade and tax aspects of the Caribbean Basin Initiative and the export of Alaskan oil and critical technologies. There should be assurance that a portion of U.S. raw material exports are processed in this country, so that export of products such as grains, logs, etc., would be made conditional upon specific domestic processing.

The AFL-CIO has urged funding for the Export-Import Bank on condition that such funds be used to support U.S.-produced goods and to offset import-financing subsidies. The AFL-CIO also supports improved Buy-American laws and opposes the weakening of these laws through regulative manipulation. We urge restoration of a strong Trade Adjustment Assistance program.

Realistic reciprocity with other nations is long overdue and should be actively pursued, starting with enforcement of existing law. Provisions offsetting unfair trade practices need to be tightened and effectively enforced.

The AFL-CIO will continue to fight for these policies and the full array of solutions adopted by this Council, as detailed in the attached appendix. Many individual U.S. industries have been hard hit by trade and these AFL-CIO proposals need to be enacted to alleviate those problems.

In addition, we support a new proposal for overall import relief:

* Legislation to require the International Trade Commission to evaluate more accurately and quickly the impact of imports upon an industry and its workers and to fashion a specific remedy to alleviate temporarily the adverse effect of such imports. Determinations of the International Trade Commission should not be overturned by the President except with the explicit agreement of Congress.

In addition to that legislation to help all industries hard-hit by imports, the AFL-CIO supports legislation currently being considered to deal with the problems of specific industries:

* The Fair Practices in Automotive Products Act, which would assure that the United States has an automotive products industry, including parts and components of cars. The bill, which passed the House of Representatives last year but did not come before the Senate, would provide that companies which sell large numbers of cars in the United States produce a fair share of the parts and components in the United States in order to provide jobs for American workers.

* The Competitive Shipping and Shipbuilding Act, which requires 5 percent of all waterborne cargoes to be carried in U.S. flagships, starting in 1983, increasing 1 percent a year until 20 percent of all U.S. bulk tonnage is shipped on U.S.-flag, U.S.-built vessels in 1998.

* Fair Market Share for Apparel Imports -- A sense-of-the-Congress resolution to state the need for action on the massive influx of job-destroying imports of garments, an industry now inundated by imports from other lands.

Immediate actions are necessary to establish a fair trade policy -- a policy that is fair to all -- to assure that there will be a strong America that can continue to cooperate with its trading partners.

###

ATTACHMENT: Trade and Investment Issues, 1983

Prior AFL-CIO Policies on Trade and Investment Issues of 1983

The U.S. needs a "fair" trade policy that enables this country to have a diversified industrial base with skills and services of an advanced economy, plus a policy that will create full employment and raise the standards of living at home as well as in other countries of the world -- all of which will help the U.S. meet the needs of a changing world in the 1980's. (Convention)

In order to achieve fair trade, international trade and investment policies must give greater emphasis to U.S. interests through its own national actions and through cooperation with other nations.

The United States must remain a major maritime, agricultural and manufacturing nation. The U.S. needs a foreign trade policy that will insure -- not undercut -- that goal.

The new factors in international trade require attention, while old problems also need solutions.

ISSUE	AFL-CIO POLICY
1. Domestic content requires that autos sold in the U.S. contain a rising percentage of U.S. value of auto parts: If more than 100,000 cars are sold, autos must have 10 percent in U.S. value. This goes up to 90 percent at over 900,000. The bill passed the House and did not come up in the Senate.	1. Domestic content laws should be enacted to assure continued production of such products as autos. A U.S. production requirement is needed to preserve employment and skills and shore up the nation's sagging industrial base. Local content requirements in autos should be tied to sales volume and should be phased in beginning with the 1983 model year. (Convention, 1981, Executive Council Statements supported H.R. 5133 in 1982.)
2. Competitive Shipping and Shipbuilding Act - Maritime Trades supported this bill in 1982 (Boggs and 75 members). It required 5 percent of all waterborne cargoes in U.S. flag ships, starting in 1983, increasing one percent a year until 20 percent of all U.S. bulk tonnage is shipped on U.S.-flag, U.S.-built vessels in 1998. It will be an issue this year.	2. There should be greater use of the U.S. merchant marine fleet by the U.S. Navy for auxiliary functions. Reviving the U.S. merchant marine also requires the negotiation of bilateral shipping agreements, particularly with respect to grain and coal shipments. The U.S. government also should ratify the UN Committee on Trade and Development code for liner conferences, which would help restore more equity of shipment in U.S. bottoms for cargo generated by U.S. trade. There should be a revision in the tax incentives and budgeting regulatory practices to encourage the building of new vessels in the U.S. rather than in foreign shipyards. (Convention, 1981.)

ISSUE	AFL-CIO POLICY
3. Trade Adjustment Assistance now provides for 52 weeks of payments at state unemployment standards and levels for workers who can prove injury from rising imports. There is also a program for firms. The law expires September 30, 1983. Problem is to restore old program, start a new one, or drop it. Training program will be an issue.	3. "The slashing of Trade Adjustment Assistance that has resulted from the budget cuts must be reversed. Those workers who lose their jobs because of imports should receive the 70 percent of lost pay for up to one year, and the training and relocation aid that they were promised in the Trade Acts of 1974 and 1979." (Convention, 1981.)
	3. Extension of Trade Adjustment Assistance to provide adequate compensation to those unemployed because of trade, and improve training, job search, and relocation aid to those displaced workers who need such help.
4. Export-Import Bank charter expires in September 1983. Issues will be giving Bank more resources, more independence. Last year Bank got $4.4 billion for direct credits and $9.2 billion ($36.8 billion) in guarantees. More than Administration requested.	4. Foreign grant, insurance and loan programs should be supervised in terms of U.S. interests at home as well as abroad. This means the Ex-Im Bank loans, guarantees and insurance activities should be carefully limited both in amount and in the authority to expand the action. (Convention, 1981.)
	4. Commitment that foreign grant, insurance and loan programs, such as the Export-Import Bank, are carefully managed to safeguard U.S. interests at home and abroad. Despite defects of the Ex-Im Bank, funds must not be slashed until other countries cut or eliminate their subsidy programs. Ex-Im Bank funds and guarantees must not be extended to any Communist countries. (Executive Council, February 1982.)
	4. Ex-Im Bank insurance and loan guarantees for South Africa, as well as other U.S. government operations which promote the flow of capital or credit to South Africa should end. (Executive Council, 1977.)

ISSUE	AFL-CIO POLICY
5. Export Administration Act will expire on September 30, 1983. Administration has identified 27 issues in this bill which basically provides authority for export control for foreign policy, national security and short-supply reasons. Bill also affects Alaskan oil issue, Arab boycott, and Administration request expected in April.	5. The Export Administration Act of 1979 prohibits the export of Alaska North Slope oil except for a national emergency and recognizes the essential role of the U.S.-flag fleet in deistributing the oil to all regions of the country. The development of domestic oil for American use and the maintenance of a U.S. fleet capable of transporting it will help insure that the nation has enough energy to meet its needs. (Convention, 1979.) 5. "Restrict the export of logs which is causing shortage-induced domestic price increases for lumber." (Housing Resolution Convention, 1981.) 5. AFL-CIO has traditionally supported foreign policy controls, security controls and controls on items in short supply (hides, logs, etc.). 5. We are also told that an embargo on the sale of grain, technology, and factories to the Soviets would hurt American farmers and businessmen more than the Soviets, who could find other suppliers. This argument assumes that we are powerless to influence the behavior of our allies, and becomes a self-fulfilling prophecy. (Convention, 1981.) 5. Export promotion should be a government priority, carefully targeted to accomplish specific goals. It should not include capital, technology and price-sensitive commodities. Export promotion must not take priority over domestic budget needs, nor be used as an excuse for undermining U.S. anti-trust laws or banking laws. The U.S. should limit the transfer of new technology in order to assure both its national defense and its technological advances. (Convention, 1981.) 5. Grains and grain agreements should assure export of food products made from grain as well as the grain itself. The U.S. government should be the negotiator, through an established "Wheat Board" similar to the Canadian model. 5. Assurance that a portion of U.S. raw material exports be processed in this country, so that export of products such as grain, logs, etc., is conditioned upon specific domestic processing.

ISSUES	AFL-CIO POLICY
6. Caribbean Basin Initiative gives President 12-year authority to grant zero tariffs on imports (except textiles and oil products) from 28 countries as long as 35 percent content comes from Caribbean (15 percent can be from U.S.).	**6.** New proposals for trade arrangements with America's nearest neighbors, or with any other individual foreign country, should be based on a realistic assessment of the past and future impact of trade and investment not only in the host country but on specific parts of the U.S. economy and on U.S. workers. Differences as well as the similarities of the trade and investment regulations of the respective countries need to be recognized. The United States should continue to try to solve specific bilateral problems, but should not enter into so-called "free trade" areas that could cause massive distortions inimport-export balances. We recognize the need to help friends achieve industrial development particularly the poorest of the developing countries. This requires that the emphasis should be on internal development, not on exports to the U.S. market at the expense of U.S. workers. The Caribbean Basin is an excellent example of an area where aid must be realistic to promote living standards and not at the expense of U.S. jobs or living standards. (Convention, 1981.)
	6. Aid in the development of Caribbean nations needs to be enhanced, but proposals for "one-way" free trade and additional investment incentives to U.S. firms for investing abroad should be rejected. (Convention, 1981.)
7. Generalized System of Preferences (GSP) Title VI of Trade Act of 1974 allows zero tariffs on imports from 140 "developing" nations and territories under certain conditions.	**7.** GSP should be repealed. At a bare minimum, Congress and the Administration should remove import-sensitive products from the list, guarantee that only the neediest countries receive the benefits, and exclude Communist economies. (Convention, 1981.)
8. Reciprocity - There is no strong reciprocity proposal before Congress. President has power to act reciprocally under Section 124 of the Trade Act of 1974. Meaningful reciprocity is highly unlikely to be achievable through a new law. Last year's proposal had little reciprocity and lots of new negotiating authority.	**8.** "Vigorous enforcement of reciprocity provisions of the Trade Act must be undertaken." (February 1982.)

ISSUES	AFL-CIO POLICY
9. Tariff cutting, Section 124 of the Trade Act allowed the President to negotiate come tariff cuts as a "housekeeping" measure at the end of tariff negotiations in 1979. Administration wants to keep extending this authority.	9. Ending of the President's continued authority to neotiate further tariff reduction. (Executive Council, February 1982.)
10. Foreign Corrupt Practices Act - Amendments to weaken enforcement of U.S. prohibitions against bribery of foreign officials. This was a big issue last year and the amendments will be re-introduced.	**10.** AFL-CIO Executive Council has called for "strictly enforced U.S. laws that prohibit bribery of foreign officials." Codes of conduct for the operations of multinational corporations are necessary, but are no substitute for strictly enforced U.S. laws that prohibit bribery of foreign officials and participation in economic blackmail schemes designed to negate American foreign policy. Similarly, international agreements are needed to improve labor standards in those countries that seek to attract industry through the exploitation of workers. (Executive Council, February 1977.)
11. Trade Reorganization - Senator Roth has called for a Department of International Trade and Industry. Senator Moynihan has introduced a bill for coordination. President recommended better coordination in State of Union message.	**11.** The current proposal for a Department of International Trade and Investment is premature and raises serious questions about how it would fit into government structure. The reasons for the proposal are understandable; however, the conflicting, confusing and proliferating agencies and offices that determine trade policies and practices demand better coordination. The recent Executive Branch reorganization of trade functions should be continually reexamined to assure much greater coordination and strengthening of domestic representation in trade decisions. "Independent" government organizations, like the Overseas Private Investment Corporation (OPIC), should be terminated as soon as possible. (Executive Council, February 1981.)

ISSUES	AFL-CIO POLICY
12. Buy American - Highway law and Surface Transportation Act, Defense Appropriations, etc. have "Buy American" provisions. These will all be under attack (both military and non-military) again this year.	**12.** The multilateral trade codes adopted in 1979 require constant monitoring and the enforcement of U.S. rights. Only the negotiated provisions should be enforced, particulary in the area of government procurement, where many U.S. agencies, state and local governments were specifically exempted from the requirements of the codes. National security clauses in the code should be used to assure U.S. production and jobs in key industries. (Convention, 1981.)
13. Escape Clause, Article XIX of the GATT and Section 201 of the Trade Act of 1974 provides for "escape" from GATT obligations for free trade if an industry can prove serious injury. But there are no clear criteria for finding injury, no requirements for action to remedy injury. A proposal for clear criteria to set a presumption of injury, to limit discretion of ITC and to limit discretion of the President, could accomplish two goals quickly: Show size of problem and get action.	**13.** To assure a viable industrial base and national security, immediate import relief should be accorded some key industries faced with serious erosion, such as the auto and steel industries. Existing laws should be improved to assure speedy relief to industries when the threat of injury from imports is evident. These laws also should be amended to assure that the producers of major and essential components can receive appropriate relief from injury caused by imports. (Convention, 1981.)
14. Services - Legislative authority is proposed.	**14.** Trade issues in "services" should be approached on a case-by-case basis and in bilateral negotiations. A clear and appropriate definition of services and adequate statistics need to be developed before multilateral trade negotiations are undertaken. The U.S. government should help promote the rights of American services industries abroad where unfair barriers stand in the way of increased U.S. employment. Service industries in the U.S. should be analyzed in relation to employment effects before there are any overall negotiations. U.S. service workers and firms should have protection against unfair trade practices. (Convention, 1981.)

Mr. COOPER. There's one comment I'd like to add with respect to the logic of the administration's position and specifically the question that Senator Proxmire proposed.

The logic escapes me. Secretary Olmer says that the conditions can't be met but he'll be bound by them. Secretary Dam in his statement actually hypothesizes a date at which the conditions will be met, and, I quote:

> Because such exports could provide significant savings, in addition, he said, and any resulting distribution efficiencies will be reflected in higher values of Alaska oil and lower cost to American consumers and in time a higher level of oil production.

But instead of waiting for that date when the conditions can be met, making a finding to that effect and presenting it to Congress for its concurrence, the administration would prefer to remove the conditions but say that they will still be bound by them. The logic just isn't there.

If it means to be bound by those conditions, then what is the point of removing them? If it doesn't mean to be bound by them or doesn't think that they can be met, what is the point of citing exactly those conditions as a justification for removing them?

There is one logical possibility. The administration may fear that Congress would fail to agree to confer such benefits on the American consumer and it will be much more difficult for Congress to disagree with the administration if the conditions are removed. I, however, find that hard to believe. I believe that the vast majority of American consumers prefer to have the protections in the law and to leave Congress with the power to concur in a Presidential finding before the exports are allowed. Logic says that the conditions are there to protect us and that we are better off with specific consumer protections and conditions and specific congressional oversight assuring that those conditions are met. Thank you.

Senator HEINZ. Thank you very much.

Mr. Merrigan.

STATEMENT OF EDWARD L. MERRIGAN, COUNSEL, NATIONAL ASSOCIATION OF RECYCLING INDUSTRIES, INC.

Mr. MERRIGAN. Thank you, Mr. Chairman. I appear today as counsel to the National Association of Recycling Industries, which is the trade association for the Nation's metals, paper, textile, and rubber recycling industries. The membership of the association consists of more than 1,200 firms located throughout the United States, all of which are engaged in recovery, processing, industrial utilization of, and foreign trade in recycled metals, paper, textiles, or rubber.

RECOMMENDATION FOR REPEAL OF SECTION 7 (C)

We appear today to urge this committee to support the administration's recommendation for the repeal of section 7(c) of the current Export Administration Act. We consider that section to be extremely onerous, grossly discriminatory, and it's a provision which applies to recycled metals only, and by so doing, we feel it's a departure from the entire intent and purpose of the Export Administration Act.

The administration's recommendation in this regard is so necessary, fair, and sound, that clearly it should be enthusiastically adopted by this committee. Section 7(c) appeared in the Export Administration Act for the first time in 1979. It was added as a last-minute amendment to that year's version of the act on the floor of the House of Representatives. It was restricted on the floor of the House in the face of overwhelming opposition by the executive branch, U.S. industry generally, and U.S. exporters to its proposed application to exports generally. Therefore, it was restricted to recycled metals only.

Essentially, the amendment which is now section 7(c), does nothing more than give large metal scrap consumers here in the United States a tool—the petition process—which they can unfairly utilize at will to attempt to establish monopolistic control over both prices and supplies of recycled metals marketed by the Nation's recycling industry. In actual operation, this dangerous tool can only serve to interfere with and disrupt export markets for recycled metals, and thereby counterproductively adversely affect both prices and supplies of recycled metals here at home and abroad. In addition, Mr. Chairman, the entire cumbersome, costly petition process has been unnecessarily engrafted on an export monitoring control system applicable to all exports including recycled metals, which has worked well for the United States over a long period of years.

As you know and as this committee knows, under sections 7 (a) and (b) of the Export Administration Act, the President and the Secretary of Commerce possess full, sweeping authority to monitor and control, if necessary, the export of any goods subject to the jurisdiction of the United States. This means, of course, that recycled metals and all other U.S. exports are subject to continuous Federal monitoring and, of course, the Secretary of Commerce has the authority to get whatever information he needs from industry and to do whatever monitoring is necessary and to make whatever recommendations seem to follow to the President regarding the imposition of export controls.

Thus, prior to and since the adoption of section 7(c), recycled metals, like all other important U.S. exports, have continuously been subject to the export monitoring and export control processes and powers of both the President and the Secretary of Commerce under sections 7 (a) and (b) of the act. Under section 7(c), U.S. exporters of recycled metals alone, however, were subjected to the additional costly, destructive, totally unjustifiable requirements labeled "Petitions for Monitoring or Controls." Under section 7(c), any company, any trade association, any group of workers, merely by filing a petition with the Secretary of Commerce can automatically trigger a procedure whereby a comprehensive investigation and series of hearings are initiated for considering the imposition of monitoring or direct quantitative controls on the exportation of recycled metals. Thus, a company or group of companies bent on disrupting export markets for recycled metals may, under section 7(c), create extreme doubt, even economic chaos, in otherwise normal marketing conditions by merely filing a petition and letting the possible imposition of quantitative export controls hang in the balance for months while the section 7(c) hearing process slowly drags along.

This was most dramatically evidenced in 1980 when a group of ferrous scrap-consuming companies triggered the section 7(c) procedure. These petitioning firms sought to have the Department of Commerce impose monitoring procedures and/or quantitative controls on the exportation of ferrous scrap, which the Department itself had considered and decided not to impose. However, petitions were filed, and this triggered hearings which went on for months.

In the end, after many months of petitions, hearings, and evaluations, the Department of Commerce reached the same conclusion it had on several previous occasions on its own initiative—there was no need or justification for the imposition of any formal monitoring or direct controls on ferrous scrap.

Mr. Chairman, permit me to emphasize that since this association represents both exporters of all forms of recycled metal and domestic manufacturing companies utilizing these very same metals, we fully appreciate and respect the need for emergency, short-supply export control mechanisms that operate fairly and effectively, and not counterproductively. Indeed, on several past occasions, the Department of Commerce has, on its own initiative, imposed strict quantitative controls on various types and forms of metals, including scrap metals.

Export controls were not intended, nor can they be justified, to guarantee the availability of raw materials to domestic users at arbitrarily conceived price levels. Unfortunately, in the past, some domestic consumers of recycled metals have sought to control their purchasing prices by enlarging the available supply through a cutoff or limitation of the exportation of these metals. Section 7(c) materially assists such arbitrary, unfair, and counterproductive actions, and that is precisely why it must be eliminated.

Section 7(c), as was evidenced in the unfortunate 1980 exercise on ferrous scrap, only serves to create hectic and disruptive conditions. The lengthy procedure automatically triggered by this provision resulted in artificially created market chaos because of the fear of impending export quotas and controls. Markets are severely disrupted when U.S. exporters and foreign consumers anticipate impending controls and when domestic consumers disrupt their normal buying habits because of presumed Government intervention.

In sum and substance, Mr. Chairman, we urge that, as proposed by the administration, section 7(c) be repealed, not only for the economic health of the entire metals industry, but in order to maximize the value of recycled metals for the U.S. economy. If Congress follows this course, then exports of recycled metals will, like all other U.S. exports, continue to be subject to the truly effective, impartial monitoring and control procedures prescribed by sections 7 (a) and (b) of the act.

Mr. Chairman, I've summarized this statement and, with your permission, I would appreciate it if the statement itself could be entered into the record.

Senator Heinz. Mr. Merrigan, without objection, your entire statement will be a part of the record and we thank you for it.

[Complete statement follows.]

STATEMENT OF
EDWARD L. MERRIGAN, COUNSEL
NATIONAL ASSOCIATION OF RECYCLING INDUSTRIES, INC.

MR. CHAIRMAN:

My name is Edward L. Merrigan. I appear before the Committee today in my capacity as counsel to the National Association of Recycling Industries, Inc. (NARI), the trade association for the nation's metals, paper, textile and rubber recycling industries. NARI's membership consists of more than 1,200 firms located throughout the United States, all of which are engaged in recovery, processing, industrial utilization of, and foreign trade in recycled metals, paper, textiles or rubber. NARI's membership includes all leading firms in the country which recover, process and utilize in manufacturing operations — as well as export — all the various ferrous and nonferrous metals, including aluminum, copper, iron and steel, stainless steel, lead and zinc.

NARI appears before you today to urge this Committee to support the Administration's recommendation for —

> The Repeal of Section 7(c) of the Current Export
> Administration Act, The Exceedingly Onerous,
> Grossly Discriminatory Provision Entitled
> "Petitions For Monitoring Or Controls", Which
> Applies To Recycled Metals Only.

The Administration's recommendation in this regard is so necessary, so fair, and so sound that clearly it should be enthusiatically adopted by this Committee. Section 7(c) appeared in the Export Administration Act for the first time in 1979. It was added as a last-minute amendment to that year's version of the Act by former Congressman Findley of Illinois. The "Findley Amendment", as it has come to be known, applies to recycled metals only. It was thus restricted by Mr. Findley in the face of overwhelming opposition by the Executive Branch, U.S. industry and U.S. exporters to its proposed application to exports generally.

It thereafter became law solely because the ensuing House-Senate conference on the 1979 legislation necessarily proceeded almost immediately, and was hastily concluded without adequate opportunity for full, comprehensive consideration of the Amendment's adverse impacts on the recycling industry, the nation's exports, the Commerce Department's role under the Act, and, of course, on the efforts cities and states are making throughout the United States to alleviate spiraling solid waste disposal problems and costs through maximum recycling of waste materials.

Essentially, the Findley Amendment does nothing more than give large metal scrap consumers here in the United States a tool — the "petition process" — which they can unfairly utilize at will to attempt to establish monopolistic control over both prices and supplies of recycled metals marketed by the nation's recycling industry. In actual operation, this dangerous tool can only serve to interfere with and disrupt export markets for recycled metals, and thereby counter-productively adversely affect both prices and supplies of recycled metals here at home and abroad. In addition, the entire cumbersome, costly "petition process" has been unnecessarily engrafted on an export monitoring-control system applicable to all exports including recycled metals, which has worked well for the United States over a long period of years.

As this Committee knows, under Sections 7(a) and (b) of the Export Administration Act, the President and the Secretary of Commerce possess full, sweeping authority to monitor and control, if necessary, "the export of any goods subject to the jurisdiction of the United States". This means, of course, that recycled metals and all other U.S. exports are subject to continuous federal monitoring whenever "the volume of such exports in relation to domestic supply contributes, or may contribute, to an increase in domestic prices or a domestic shortage, and such price increase or shortage has, or may have, a serious adverse impact on the economy or any sector thereof". Section 7(b) of the Act mandates with equal application to all exports:

> "Any such monitoring shall commence at a time adequate to assure that [it] will result in a data base sufficient to enable policies to be developed . . . to mitigate a short supply situation or serious inflationary price rise or, if export controls are needed, to permit imposition of such controls in a timely manner. . . ."

Under Section 7(b) of the Act, the Secretary of Commerce can obtain all the information his monitors require from U.S. exporters and others, and weekly reports must be prepared continuously to reflect the volumes of monitored commodities. Where necessary, export controls may be applied as promptly as necessary under Section 7(a).

Thus, prior to and since the adoption of the Findley Amendment, recycled metals — like all other important U.S. exports — have continuously been subject to the export monitoring and export control processes and powers of the President and the Secretary of

Commerce under Sections 7(a) and (b) of the Act. Under the Findley Amendment — now Section 7(c) of the Act — U.S. exporters of recycled metals alone, however, were subjected to additional costly, destructive, totally unjustifiable requirements labeled "Petitions For Monitoring Or Controls". Under Section 7(c), any company, trade association or group of workers, merely by filing a petition with the Secretary of Commerce can automatically trigger a procedure whereby a comprehensive investigation and series of hearings are initiated for considering the imposition of monitoring or direct quantitative controls on the exportation of recycled metals. Thus, a company or group of companies bent on disrupting export markets for recycled metals, may, under Section 7(c), create extreme doubt, even economic chaos, in otherwise normal marketing conditions, by merely filing a petition and letting the possible imposition of quantitative export controls hang in the balance for months while the Section 7(c) hearing process slowly drags along.

This was most dramatically evidenced in 1980, when a group of ferrous scrap-consuming companies triggered the Section 7(c) procedure. These petitioning firms sought to have the Department of Commerce impose monitoring procedures and/or quantitative controls on the exportation of ferrous scrap. Unfortunately, under Section 7(c) — even though the Commerce Department had repeatedly rejected, after its own full analysis, this call for control action — it had no choice but to institute a lengthy and costly investigation. This involved several hearings in various parts of the country, forcing the Department to expend funds and commit departmental personnel to the planning and conduct of such hearings, not to mention all the related implications involving hearing records, evaluations and analysis, reports, etc. Similarly, hundreds of industry companies were forced — either on an individual basis or through their trade organization representatives — to file presentations in the hearing process at considerable expense.

In the end — after many months of petitions, hearings and evaluations — the Department of Commerce reached the same conclusion it had on several previous occasions on its own initiative: there was no need or justification for the imposition of any formal monitoring or direct controls on ferrous scrap.

Mr. Chairman, permit me to emphasize that since this Association represents both exporters of all forms of recycled metal and domestic manufacturing companies utilizing these very same metals, we fully appreciate and respect the need for emergency, short-supply export control mechanisms that operate fairly and effectively, and not counter-productively. Indeed, on several past occasions, the Department of Commerce has, on its own initiative, imposed strict quantitative controls on various types and forms of metals, including scrap metals. In recent decades, where extraordinary marketing conditions arose, there have been both outright embargoes on the exportation of some recycled metals and strict quantitative controls on others. On various occasions, they have applied to iron and steel scrap, stainless steel scrap, and copper scrap.

It has not required wartime conditions for such controls to be imposed. They have been imposed when severe supply emergencies existed, either because of excessive drains on available supplies created by shutdowns of domestic mines, or when highly excessive inflationary conditions created such short supplies. At the same time, the Department of Commerce has wisely and appropriately declined to impose emergency export controls simply because there has been a temporary rise in export levels of recycled metals or when traditionally cyclical metal prices are in a temporary upward trend.

Export controls were not intended — nor can they be justified — to guarantee the availability of raw materials to domestic users at arbitrarily-conceived price levels. Unfortunately, in the past some domestic consumers of recycled metals have sought to control their purchasing prices by enlarging the available supply through a cut off or limitation of the exportation of these metals. Section 7(c) materially assists such arbitrary, unfair and counter-productive actions, and that is precisely why it must be eliminated.

This Association has supported on several past occasions — and will continue to support in the future — the imposition of emergency control actions by the Department of Commerce when true, bona fide short-supply conditions exist. We believe, however, that it is vital that any such export control actions be applicable to all forms — virgin and recycled alike — of the metal in emergency short supply.

The Congress and various government agencies have consistently recognized the competitive inter-relationship of virgin and recycled metals. Indeed, practically all grades of recycled metals meet the same or similar specifications as those from virgin mine sources, and therefore most often are utilized interchangeably or in substitution for each other. Thus, they have direct competitive relationships and inter-related marketing and price impacts. To arbitrarily control, or to seek to influence the available supply or price level of one, is to directly impact the supply and price level of the other. Indeed, when labor strikes have forced the shutdown of U.S. copper mines, the threatened short supply and inherent inflationary price implications for recycled copper necessitated the imposition of export controls. This Association did not oppose the imposition of controls under such emergency conditions as long as such controls applied to all forms of copper on a non-discriminatory basis.

Section 7(c) — as was evidenced in the unfortunate 1980 exercise on ferrous scrap — only serves to create hectic and disruptive conditions. The lengthy procedure automatically triggered by this provision resulted in artificially created market chaos because of the fear of impending export quotas and controls. Markets are severely disrupted when U.S. exporters and foreign consumers anticipate impending controls and when domestic consumers disrupt their normal buying habits because of presumed government intervention. Indeed, as this Association predicted when it first opposed the imposition of this provision, Section 7(c) only serves to create chaos in the marketplace and to exacerbate the very problem the amendment allegedly sought to correct.

Finally, Mr. Chairman, permit me to point out that traditionally in all of the various metal sectors, there has been surplus recycled metals available beyond those needed by domestic users. There is far more ferrous scrap and nonferrous scrap available through both industrial and solid waste sources than can possibly be utilized by U.S. manufacturing industries.

As a result of its expanding operations, the recycling industry in recent years has increased the share of the total raw material market it supplies. Indeed, in 1982, a new level record was set for aluminum: the recycling industry supplied over 56% of this country's aluminum. It supplied 56% of its copper; 27% of its iron and steel; 46% of its stainless steel; 52% of its lead; 17% of its zinc; and over 25% of its silver and gold. Practically all of these are at historically high levels. In addition to serving these primary goals, the industry has been able to export surplus quantities of both ferrous and nonferrous metal to our friendly trading partners in Europe and the Far East. The Department of Commerce has appropriately encouraged such trade expansion.

Export activity has unfortunately been drastically curtailed in the last two years as a result of the most serious recession to impact the recycling industry in the last 50 years. Nevertheless, the exportation of recycled metals is vital to the continued economic health of the industry. Without this activity, not only is the economic health of the recycling industry severely and adversely impacted, but quite obviously the contributions of this industry to improving the balance of trade and balance of payments for the United States are similarly impeded.

Furthermore, the maintenance of healthy and growing markets in both the domestic and the international areas is vital to enabling the processing sector of the recycling industry to expand its recovery of increased quantities of the recycled metals available in the solid waste supply in the United States. Many of these metallic elements are of low value, and their recovery depends directly on the availability of sustained markets.

In conclusion, Mr. Chairman, we urge that, as proposed by the Administration, Section 7(c) be repealed, not only for the economic health of the entire metals industry, but in order to maximize the value of recycled metals for the United States economy. If Congress follows this course, then exports of recycled metals will, like all other U.S. exports, continue to be subject to the truly effective, impartial monitoring and control procedures prescribed by Sections 7(a) and (b) of the Act.

Senator **Heinz**. Mr. Kaplan.

STATEMENT OF IRVING M. J. KAPLAN, REPRESENTING THE FERROUS SCRAP CONSUMERS COALITION, ACCOMPANIED BY DAVID A. HARTQUIST, ESQ., COLLIER, SHANNON, RILL & SCOTT, FSCC LEGAL COUNSEL

Mr. I. **Kaplan**. Thank you, Mr. Chairman.

My name is Irving Kaplan and I am vice president and secretary of the Copperweld Corp. I am appearing here today as a member of the steering committee of the Ferrous Scrap Consumers Coalition, the FSCC, a nonprofit association comprised of cold metal shop steel producing firms and ferrous—iron and steel—foundries, as well as unions representing employees in these companies. About 900 companies throughout the United States, which employ over 300,000 workers, are members of this association. I am accompanied by Mr. David A. Hartquist of Collier, Shannon, Rill & Scott, the FSCC's legal counsel.

Mr. Chairman, I'm pleased to see that the statement I've had the privilege of reading that the Institute of Scrap Iron & Steel disagreed with Mr. Merrigan's position. Mr. Steve Kaplan's testimony supported the retention of section 7(c) and makes several recommendations for modifying the statutory language.

In the interest of time I will summarize my written statement but I ask that my entire written statement be included in the record.

[Complete statement follows:]

TESTIMONY OF
IRVING M. J. KAPLAN
ON BEHALF OF THE
FERROUS SCRAP CONSUMERS COALITION

Mr. Chairman and Members of the Subcommittee:

My name is Irving Kaplan and I am Vice President and Secretary of the Copperweld Corporation. I am appearing here today as a member of the Steering Committee of the Ferrous Scrap Consumers Coalition ("FSCC"), a non-profit association comprised of "cold metal shop" steel producing firms and ferrous (iron and steel) foundries, as well as unions representing employees in these companies. About 900 companies throughout the U.S., which employee over 300,000 workers, are members of this association. I am accompanied by Mr. David A. Hartquist of Collier, Shannon, Rill & Scott, the FSCC's legal counsel.

Unlike large integrated steel producers, FSCC member steel companies rely virtually exclusively on ferrous scrap as the metallic raw material for producing iron and steel. Foundries also are substantially dependent on ferrous scrap as their raw material.

Ferrous scrap is a vital ingredient in the production of the steel and iron essential to the United States' military and economic well-being. Ferrous scrap is necessary for the production of stainless, tool and alloy steels, which are essential components of airplanes, automobiles, tanks, trucks and ships. In short, ferrous scrap is a strategic and critical material.

The steel and foundry industries are increasingly reliant on ferrous scrap. One of the most efficient ways that steel can be made is in electric furnaces. In electric furnaces, scrap represents virtually 100% of the ferrous metallics used. Steel produced in electric furnaces in the United States grew from 8 million tons in 1960 to 20.2 million tons in 1970, a 150% increase. By 1981, 34.1

million tons of steel were made in electric furnaces. In the first two months of 1983, approximately 30.9% of the United States steel output was produced in electric furnaces, compared with approximately 15% in 1970. The electric furnace provides a unique technology to make high quality alloy-containing steels. Use of electric furnaces and the demand for scrap is growing because of the low capital costs associated with such furnaces and the relative environmental advantages.

The scrap market is particularly volatile. In 1973 worldwide steel demand boomed and exports of ferrous scrap accelerated rapidly. There was a scrap shortage in the United States. Ultimately, the Commerce Department instituted export controls on ferrous scrap. Unfortunately, those controls came too late to be of any real help to the steel industry.

During the current worldwide recession there is no shortage of ferrous scrap. Given the volatility of the market, however, when worldwide demand increases, scrap shortages could occur.

Congress recognized the volatility of the ferrous scrap market and the importance of ferrous scrap to this country's economy and national defense, when it adopted what is now subsection (c) of Section 7 of the Export Administration Act. Congress also recognized that it was unwise to leave the procedures for petitioning for export monitoring or controls to the complete and unfettered discretion of whatever administration was in power. It therefore enacted subsection (c) which provides a fair petitioning process. Subsection (c) requires a hearing and sets time limits for a decision by the Commerce Department. It allows all parties affected by a decision to have an opportunity to present their views in public, and have a decision made on the merits of their arguments. The provision merely brings a little sunshine into what had previously been a secret, impenetrable process. We think it would be a serious mistake to delete subsection (c) and return to a totally discretionary system, which would be difficult for the Congress to oversee. The Ferrous Scrap Consumers Coalition therefore urges you to reject the Administration's proposal to delete subsection (c). We prefer instead the provisions of S.397 and S.434, which leave subsection (c) intact.

Timely Monitoring

Section 7 of the Act provides essentially for two kinds of governmental actions in "short supply" situations: monitoring and controls of exports. Monitoring, as the term implies, requires the Commerce Department to collect information on exports of the subject product. It is an information gathering device; monitoring involves no limits or prohibitions on exports. By contrast, under the controls authority of Section 7(a) of the Act, the President actually may prohibit or curtail the export of goods.

One would expect that in most instances monitoring, which involves relatively unobtrusive information gathering, would be instituted well in advance of any situation which might require controls. Indeed, Congress has recognized the need for timely monitoring in Section 7(b) of the Act by providing that:

> Any such monitoring shall commence at a time adequate to assure that the monitoring will result in a data base sufficient to enable policies to be developed, in accordance with Section 3(2)(C)

> of this Act, to mitigate a short supply situation or serious inflationary price rise or, if export controls are needed, to permit imposition of controls in a timely manner. (Emphasis added).

Although monitoring is designed principally to provide timely information for policy makers, affected businesses and some government officials believe that monitoring inevitably leads to formal controls. Fulfillment of this prophecy often is aided by the timing of a decision to impose monitoring. Monitoring is usually not contemplated until markets are already is the throes of shortages or inflationary price increases. Naturally, a decision to impose monitoring on a volatile market is not likely to calm market activity.

If monitoring were begun before a market was in crisis, though, it would be less likely to disrupt the market. Indeed, if commenced early enough, monitoring could help eliminate the need for controls by permitting more effective advance planning by suppliers and consumers. Amendments to the Act are needed to ensure that monitoring takes place before markets are in crisis.

We suggest that the timely monitoring provision in subsection 7(b) be amended by deleting the word "mitigate," and inserting in its place "prevent." Thus, monitoring could be imposed in order to prevent a short supply situation rather than mitigate one that is already in existence.

Similarly, the criteria for monitoring themselves need modification to ensure that monitoring can begin before it is too late. Section 7(b) of the Act now provides for monitoring when:

> (1) the volume of such exports in relation to domestic supply contributes or may contribute;

> (2) to an increase in domestic prices or a domestic shortage; and
>
> (3) such price increase or shortage has, or may have a serious adverse impact on the economy or any sector thereof.

(Emphasis supplied).

Paragraph (1) of subsection 7(b) wisely provides for monitoring when exports may contribute to certain adverse conditions. In practice, however, the Commerce Department's determination that exports may contribute to those adverse market conditions is usually based on current export volumes. Although we believe the law is already clear, the statute should be clarified by stating explicitly that the Department need not wait until export volumes are high to make its determination. At the very least, the legislative history of any changes in the Act should make clear that trends in exports should be relied upon in making this determination.

Criteria for Monitoring

The criteria for monitoring also should be changed. At present, the volume of exports is viewed in relation to domestic supply. Domestic supply of a given good is often difficult to ascertain; for ferrous scrap, it is impossible. Despite years of studies and debate, no one knows how much ferrous scrap is available domestically, nor is there even agreement upon how to measure the domestic supply of that commodity. Moreover, unlike producers of iron and steel who report their ferrous scrap purchases to the United States Bureau of Mines, no information on ferrous scrap supplies is provided to the government by scrap dealers. Thus, although there is virtually no useable information on domestic ferrous scrap supplies, there is a great deal of information on ferrous scrap demand.

Such information on domestic demand for any product should be required for making a decision concerning monitoring. Certainly, information on demand for ferrous scrap must be considered before a sensible decision on monitoring can be made.

We recommend, therefore, that the words "or demand" be inserted after the word "supply" in paragraph (1) of the monitoring criteria. In this way, if the Department lacks information on supply, or for other reasons regards demand as a more useful indicator of market trends, it may use such information in making a monitoring decision. In addition to making clear that demand should be considered, the criteria for controls should generally be made more objective. In our discussion of the controls criteria below we suggest a formula that could also be applied to monitoring.

Criteria for Controls

Section 7(a) of the Act grants the Secretary of Commerce authority to control exports where necessary to carry out the policy of Section 3(2)(C), which is "to restrict the export of goods where necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand." (Emphasis added). The statute and its legislative history provide little guidance on the meaning of this language. Is it necessary, for example, for ferrous scrap to be in such short supply that steel mills or foundries must actually close for lack of scrap before export controls are imposed? If actual outages of a material are not required, what kinds of shortages must be shown to warrant export controls? The statutory language is simply too vague to be rationally and consistently applied. Although absolute precision in this area may be impossible, some objective standards should be included in the provision concerning controls.

We suggest that the following general conditions be met before export controls can be imposed under Section 7(a) of the Act:

> (1) Over the course of the preceding six months there must be a rising trend in the level of demand of the product in question, as measured by the combined total of domestic consumption plus exports;
>
> (2) During the same period there must be a rising trend in the ratio of exports to domestic consumption; and
>
> (3) There must be a rising trend in prices over the same period. This trend must be increasing at a rate faster than the long-term increase in prices registered over an immediately preceding period of years. The price trend during the six month period must also exceed the increase in the producer price index for industrial commodities or the increase in another related and appropriate aggregate index.

The details of these conditions, of course, are extremely important. It may be appropriate to apply these conditions using relatively low thresholds for decisions on monitoring, while imposing higher numerical thresholds for controls. Also, because monitoring will provide information on present and future demand (through review of forward contracts), the criteria for controls should look to the future as well as the past. Whatever the time periods and the rates actually used, the Act would be vastly improved by inclusion of more objective criteria such as outlined above for short supply controls and monitoring.

The FSCC appreciates the opportunity to present its views. We would be happy to work with the Committee and its staff to improve the Export Administration Act.

I would be pleased to try to answer your questions.

Mr. I. **Kaplan**. Unlike large integrated steel producers, FSCC member steel companies rely virtually exclusively on ferrous scrap as the metallic raw material for producing iron and steel. Foundries also are substantially dependent on ferrous scrap as their raw materials.

Ferrous scrap is a vital ingredient in the production of the steel and iron essential to the U.S. military and economic well-being. Ferrous scrap is necessary for the production of stainless, tool, and alloy steels, which are essential components of airplanes, automobiles, tanks, trucks, and ships. In short, ferrous scrap is a strategic and critical material.

The steel and foundry industries are increasingly reliant on ferrous scrap. One of the most efficient ways that steel can be made is in electric furnaces. In electric furnaces, scrap represents virtually 100 percent of the ferrous metallics used. Steel produced in electric furnaces in the United States grew from 8 million tons in 1960 to 20.2 million tons in 1970, a 150 percent increase. By 1981, 34.1 million tons of steel were made in electric furnaces. In the first 2 months of 1983, approximately 30.9 percent of the U.S. steel output was produced in electric furnaces, compared with approximately 15 percent in 1970. The electric furnace provides a unique technology to make high quality alloy-containing steels. Use of electric furnaces and the demand for scrap is growing because of the low capital costs associated with such furnaces and the relative environmental advantages. Each ton of ferrous scrap used in steel manufacturing in place of iron ore or coal saves the equivalent of three barrels of crude oil.

The scrap market is particularly volatile. In 1973, worldwide steel demand boomed and exports of ferrous scrap accelerated rapidly. There was a scrap shortage in the United States. Ultimately, the Commerce Department instituted export controls on ferrous scrap. Unfortunately, those controls came too late to be of any real help to the steel industry.

DEALING WITH SHORT-SUPPLY PROBLEMS

My purpose here this morning is not that a scrap shortage is imminent and that controls should be imposed immediately. My own view is that as long as the worldwide recession continues there will be no scrap shortage. I am concerned about the future, however, because of the volatility of the scrap market. I'm here today because I believe that the law should provide an expeditious mechanism for dealing with any short-supply problem that arises.

Congress recognized the volatility of the ferrous scrap market and the importance of ferrous scrap to this country's economy and national defense, when it adopted what is now subsection (c) of section 7 of the Export Administration Act. Congress also recognized that it was unwise to leave the procedures for petitioning for export monitoring or controls to the complete and unfettered discretion of whatever administration was in power. It therefore enacted subsection (c) which provides a fair petitioning process. Subsection (c) requires a hearing and sets time limits for a decision by the Commerce Department. It allows all parties affected by a decision to have an opportunity to present their views in public, and have a decision made on the merits of their arguments. The provision merely brings a little sunshine into what had previously been a secret, impenetrable process. We think it would be a serious mistake to delete subsection (c) and return to a totally discretionary system, which would be difficult for the Congress to oversee. The Ferrous Scrap Consumers Coalition therefore urges you to reject the administration's proposal to delete subsection (c). We prefer instead the provisions of S. 397 and S. 434, which leave subsection (c) intact.

Section 7 of the act provides essentially for two kinds of governmental actions in short supply situations: monitoring and controls of exports. Monitoring, as the term implies, requires the Commerce Department to collect information on exports of the subject product. It is an information gathering device; monitoring involves no limits or prohibitions on exports. By contrast, under the controls authority of section 7(a) of the act, the President actually may prohibit or curtail the export of goods.

One would expect that in most instances monitoring, which involves relatively unobtrusive information gathering, would be instituted well in advance of any situation which might require controls. Indeed, Congress has recognized the need for timely monitoring in section 7(b) of the act.

Although monitoring is designed principally to provide timely information for policymakers, affected businesses and some Government officials believe that monitoring inevitably leads to formal controls. Fulfillment of this prophecy often is aided by the timing of a decision to impose monitoring. Monitoring is usually not contemplated until markets are already is the throes of shortages or inflationary price increases. Naturally, a decision to impose monitoring on a volatile market is not likely to calm market activity.

If monitoring were begun before a market was in crisis, though, it would be less likely to disrupt the market. Indeed, if commenced early enough, monitoring could help eliminate the need for controls by permitting more effective advance planning by suppliers and consumers. Amendments to the act are needed to insure that monitoring takes place before markets are in crisis.

We suggest that the timely monitoring provision in subsection 7(b) be amended by deleting the word "mitigate," and inserting in its place "prevent." Thus, monitoring could be imposed in order to prevent a short supply situation rather than mitigate one that is already in existence.

Similarly, the criteria for monitoring themselves need modification to insure that monitoring can begin before it is too late. Paragraph 1, subsection 7(b) wisely provides for monitoring when exports contribute to certain adverse conditions. In practice, however, the Commerce Department's determination that exports may contribute to those adverse market conditions is usually based on current export volumes. Although we believe the law is already clear, the statute should be clarified by stating explicitly that the Department need not wait until export volumes are high to make its determination. At the very least, the legislative history of any changes in the act should make clear that trends in exports should be relied upon in making this determination.

I think the criteria for monitoring also should be changed. At present the volume of exports is viewed in relation to domestic supply. Domestic supply of a given good is often difficult to ascertain; for ferrous scrap, it is impossible. Despite years of studies and debate, no one knows how much ferrous scrap is available domestically, nor is there even agreement upon how to measure the domestic supply of that commodity. Moreover, unlike producers of iron and steel who report their ferrous scrap purchases to the U.S. Bureau of Mines, no information on ferrous scrap supplies is provided to the Government by scrap dealers. Thus, although there is virtually no usable information on domestic ferrous scrap supplies, there is a great deal of information on ferrous scrap demand.

We recommend, therefore, that the words "or demand" be inserted after the word "supply" in paragraph (1) of the monitoring criteria. In this way, if the Department lacks information on supply, or for other reasons regards demand as a more useful indicator of market trends, it may use such information in making a monitoring decision.

Now section 7(a) of the act grants the Secretary of Commerce authority to control exports where necessary to carry out the policy of section 3(2)(c), which is to restrict the export of goods where necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand. The statute and its legislative history provide little guidance on the meaning of this language. Is it necessary, for example, for ferrous scrap to be in such short supply that steel mills or foundries must actually close for lack of scrap before export controls are imposed? If actual outages of a material are not required, what kinds of shortages must be shown to warrant export controls? The statutory language is simply too vague to be rationally and consistently applied. Although absolute precision in this area may be impossible, some objective standards should be included in the provision concerning controls.

In my written statement I suggest certain objective criteria which could be used for both short supplies and monitoring. The details, of course, would be very important. The FSCC would be happy to work with the committee and its staff to the details.

In summary, Mr. Chairman, the FSCC urges the committee to retain subsection (c) with its provision for ferrous procedures. We also recommend that the act be amended to insure timely monitoring with more objective standards for both monitoring and controls.

We thank you for the opportunity to present the FSCC views and I would be pleased to answer any questions.

Senator HEINZ. Mr. Kaplan, thank you very much.

Mr. Steven Kaplan.

STATEMENT OF STEVEN KAPLAN, FIRST VICE PRESIDENT, INSTITUTE OF SCRAP IRON & STEEL, INC., ACCOMPANIED BY DR. HERSCHEL CUTLER, EXECUTIVE DIRECTOR

Mr. S. KAPLAN. With your permission, Mr. Chairman, I will summarize my remarks and ask that the full statement be entered in the record.

Senator HEINZ. Without objection, so ordered.

[Complete statement follows:]

TESTIMONY OF THE
INSTITUTE OF SCRAP IRON AND STEEL, INC.

STEVEN KAPLAN, FIRST VICE PRESIDENT
HERSCHEL CUTLER, EXECUTIVE DIRECTOR

My name is Steven Kaplan. I am Vice President of M. S. Kaplan Co., a metallic scrap brokerage and processing firm headquartered in Chicago, Illinois. I appear before you today as First Vice President of the Institute of Scrap Iron and Steel, Inc., the national trade association representing more than 1,300 firms in the metallic scrap processing industry. I am accompanied by Dr. Herschel Cutler, the Institute's Executive Director.

Institute members handle, process and ship approximately 95 percent of all purchased ferrous scrap consumed in the United States or exported. The Institute is headquartered at 1627 K Street, N. W., Washington, D. C. 20006.

The Institute is very concerned with the short supply provisions of the Export Administration Act of 1979. The short supply provisions deal with monitoring and/or controls of the export of United States commodities in general and metallic scrap in particular. Unfortunately, the metallic scrap processing industry has experienced the inequitites and arbitrary decision-making inherent to the short supply provisions as contained in present law because it has, over time, been victim or near victim to potential disaster directly related to the short supply provisions.

With

(1) no specific definitions of the terms involved in a finding that monitoring or controls are in order,

(2) no showing that the complaining party has suffered any material injury as a result of the exports suggested for monitoring or controls,

(3) no recognition that short supply controls (as contrasted with foreign policy and national defense controls) are essentially domestic economic regulations, and

(4) no chance for review of the administrative decision-making system (especially when the short supply controls are recognized as basically economic regulation and a means to handicap one economic interest at the expense of a second -- both being American economic interests),

the concern of the scrap processing industry is apparent.

The industry strongly urges review of the present inequitable situation. Despite the fact that scrap processors have found their hard won export markets denied or threatened over the past years by export control acton, there is no denying the positive showings that:

1. a vast scrap iron surplus is the normal condition,
2. there is no relationship between the price of scrap iron and the price of steel (the price of scrap iron has a fluctuating history and the price of steel is virtually undirectional -- upward),
3. the so-called scrap problems of the steel industry reflect, in the main, business risk and are not related to the scrap iron export market (Steel is made from iron ore and/or scrap iron. When scrap prices are low, the scrap using mill has an advantage over the ore user; when scrap prices are higher, the reverse is true. In the latter case, certain scrap based mills attempt to shift the business risk to the scrap processor, with the aid of the government under the Export Administration Act, by denying the processor his export market.), and

4. scrap iron prices reflect a freely traded commodity. (Price will fluctuate more dramatically than most other items purchased by the steel industry. This is appreciated by the mills when the price of scrap iron is low but it is not even "superficially understood" when the price of scrap iron is high.)

Thus, the objectives of the Institute in presenting this testimony can be summarized :

- to reduce governmental regulatory interference in the market and to achieve the overall policy of the Act that export controls be used sparingly and only to the extent necessary.
- to counter the risk of unwarranted economic regulatory controls on metallic scrap under the Act by making the standards for export monitoring and controls objective and well-grounded in economics, and by making decisions to monitor or control subject to judicial review.

Scrap processing is predominantly a family-owned, small business industry which takes the worn out and obsolete metallics, as well as the industrial by-products, generated in the country, and converts them into man-made raw materials for the production of new iron and steel and other metals. The scrap processor is a key factor in the recycling chain and he had performed this service for many years before the term recycling was appreciated.

Utilizing recyclable metallics results in astounding environmental benefits. For example, according to EPA data, using scrap iron instead of virgin iron ore to make new iron and steel means a reduction in:

air pollution effluents of 86%
water pollution of 76%
water use of 40%
mining wastes of 97%

Moreover, using scrap iron instead of iron ore yields a 74% saving in the energy required to make new iron and steel products. In other words, it takes four times as much energy to make steel from iron ore as it does to make the same steel from scrap iron.

Scrap iron is obviously a valuable commodity and the United States has virtually unlimited supplies of that commodity. In a recent study commissioned by the Metal Scrap Research and Education Foundation, the international economic consulting firm Robert R. Nathan and Associates, found that there was an available inventory of ferrous scrap at the end of 1981 amounting to more than 680 million tons, a 15-20 year supply even assuming not another pound of scrap will ever be generated. This inventory -- which, in fact, grows daily -- is available and will come to the market when demand requires those volumes.

The record year for U. S. scrap iron purchases by all American steel mills and foundries and all foreign steel mills and foundries was 1974, when a total of 60 million tons of scrap iron were bought. The total purchases for the years that followed 1974 never approached that record, and, in fact, the total for the year 1982, both domestic and foreign, was only 34 million tons.

The country has faced and will face, a growing involuntary stockpile of available, but unwanted, recyclable materials unless additional markets are found and existing markets are expanded.

The scrap industry has worked closely with the domestic users of scrap iron to stimulate their interest in employing more electric furnaces -- virtually a 100% consumer of scrap iron - and also to raise the percentage of scrap iron used in iron ore based furnaces. The number of new electric furnaces that have been installed indicates that many of the clear benefits of scrap iron usage have been recognized by investors in new and expanded mills and foundries. The experimentation underway in some ore based mills to increase the scrap iron charge is likewise encouraging.

But it is clear that with an inventory of scrap discards that has grown in every year since 1956 -- including the peak demand year of 1974 -- there must be more markets if the scrap industry is to remain viable and if the country is to gain the full value of the scrap materials that it generates. Obviously, the highest value to the country would be for more American steel to be made with more American scrap -- and that is occurring. However, there are other benefits to be gained by this country if off-shore markets are also developed -- especially where there is no realistic hope for a domestic industry to use anything approaching the available scrap iron.

This need for off-shore markets is more critical for the coastal areas than for many inland locations for obvious reasons but also because the location of most major scrap consuming points is inland. At the coastal locations much more scrap is generated than could be utilized locally or nearby due to high transportation costs and, absent an export market, the material will simply accumulate or be landfilled, and eventually rust away. (It is tragic to note in that regard, that since 1976, Nathan Associates estimated that 1 million tons of backlogged scrap iron rusted into oblivion for lack of a market.)

The value of a viable export trade in scrap iron and its positive balance of payments contribution cannot be overestimated in these times of trade deficits. And, correctly, there is now very active encouragement for Americans to get into the export business. This Administration, as have others before it, realizes that in order for the American economy to prosper, there must be a world market for American products. In simplest terms, for many segments of our economy, there isn't enough market demand for what America can produce if it looks only to its own shores as the market's limits. And America produces far more scrap than it can conceivably use - now and in the foreseeable future.

The scrap processing industry recognized the need for exports long ago. In order to meet the survival need many scrap processors undertook an intensive foreign market development program, and it worked. We were able to show that a small businessman, with a highly desirable product, could find a niche in the world market, could exist as a significant American exporter and could work for his own best interests as well as the best interests of the American economy by making positive contributions to the balance of trade. Scrap iron came from nowhere to become a major contributor to the plus side of American international trade -- one of few American industries making such a contribution.

What happened was that through individual initiative -- private entrepreneurship if you will -- American scrap became the world standard. It was American scrap that became desired internationally.

We made the needed investments, committed large amounts of capital, to be certain we could supply the needs of all customers -- foreign and domestic -- and we made sure to meet those needs.

It is a fact beyond dispute that whenever a consumer wanted scrap iron it was delivered at the market price and in the volumes desired. No American consumer ever was unable to buy all the scrap iron he wanted when he wanted it. As you know, such a statement is not possible from many other producers of American products. For example, during 1974, steel went on allocation in many parts of the country but scrap was delivered to all who wanted it in the volume they requested. There has always been enough scrap to meet everyone's needs and then some -- there will be enough scrap to meet everyone's needs and then some in the foreseeable future.

In early 1973, when some American steel mills found they had difficulty making as much money producing steel as they felt appropriate, a movement developed entirely ignoring scrap iron availability, which vented itself in the context of the Export Administration Act. Specifically, what happened was that these mills found within the Short Supply Provisions of the Act a basis to induce the Federal government to consider export controls. It was not a question of availability of the material. Rather, those mills felt that price control of their raw material -- disguised as export control -- would be in their best interests.

Unfortunately, emotion -- not fact -- prevailed and the export of scrap iron was limited.

There were, over subsequent years, attempts made to change the Export Administration Act to make it even easier to control scrap iron exports.

Then, in 1979, the so-called Findley Amendment (Section 7(c)) was added to the Export Administration Act at the behest of certain mills and foundries. It singled out metallic scrap for special attention via specific monitoring provisions.

Monitoring of a freely traded commodity means, to the foreign buyer, that the American Government is going to control its availability internationally. The monitoring process is viewed as simply the administrative vehicle to create the incriminating data to impose controls. Indeed, monitoring was advocated by the mills and foundries because it leads to a self-fulfilling prophecy, namely, in order to find out if controls are needed, monitoring is undertaken. Because monitoring, in the minds of foreign buyers, always leads to controls, foreign buyers place orders for more than is needed to ensure that their orders are recorded in advance of controls thereby increasing their chances of obtaining the needed material. Because monitoring now finds high order levels, the controls are found to be justified.

Fortunately, in 1980, when the new monitoring provision was first tested, the petitioners failed to prove their case and the Department of Commerce said no to the request for monitoring. But in order to prevail, the scrap processing industry had to undertake a lengthy and very costly defense of its right to do business anywhere in the world while simultaneously the domestic demand for scrap was crumbling. And the defense had to be undertaken without any definition of the key economic terms in the Act and without the need for the complaining parties to demonstrate material injury as a result of the scrap exports they wanted curtailed.

The defense was costly but the expense of the undertaking was far wider than the travel dollars and legal fees spent. First, America's reliability as a scrap supplier was now further challenged. Countries with investments in steelmaking facilities recognized the need to look for alternative sources of scrap iron -- and they did, to varying degrees, -- and, second, countries with investments in steelmaking facilities began efforts to locate alternative sources of iron units such as direct reduced iron -- and many of them did. America became less and less thought of as a reliable supplier of scrap.

Our marketing efforts suffered and our customer relations suffered. And today, supplemented by other world situations, American scrap is facing strong new competition from British and Russian scrap in addition to the historic competitors.

LEGISLATIVE RECOMMENDATIONS

The Administration's recent proposal to amend the short supply provisions does not adequately address these concerns. A more thorough revision of Section 7 is sorely needed to reduce the adverse effect of short supply controls on our industry and the economy generally. ISIS urges the Congress to prohibit the imposition of short supply controls on metallic scrap unless the Secretary of Commerce holds formal proceedings on the record to determine whether the statutory standards for such controls are satisfied. The following five amendments would accomplish this goal:

1. Reform § 7 to establish that there may be no short supply monitoring or controls except pursuant to a formal administrative hearing process subject to standards which have been defined by rulemaking;
2. Require the Secretary of Commerce to define the key terms in § § 3(2)(C) and 7 through a formal rulemaking by a date certain;
3. Require a showing of material injury as a prerequisite to the imposition of short supply controls;
4. Amend § 13(a) of the Act to authorize APA judicial review of agency actions under the short supply provisions;
5. Provide for the sanctity of existing export contracts from short supply controls.

1. Reform of § 7

Section 7 should be reformed to require a formal administrative hearing process and a final agency decision on the record prior to the imposition of controls or monitoring under § 7. No controls or monitoring should be imposed in the absence of such public proceedings in which it is determined that the criteria established in § 7 are fully satisfied.

Currently, the President can on his own initiative and without public participation impose export controls under §§ 7(a), and the Secretary can similarly initiate export monitoring under §§ 7(b).

ISIS believes that these provisions should be amended so that the government is required to proceed deliberately and publicly before exercising this authority and thereby depriving any domestic industry of its right to compete in international markets. The impact of a decision to control exports can be devastating, and yet the government is not currently required to hear those damaged by its action. With the exception of §§ 7, virtually every statute in American history which has authorized price controls -- and short supply export controls are price controls -- has provided for some public procedure to assure that the government does not act arbitrarily or erroneously to the injury of a discrete segment of the economy.

In addition, the public costs of export controls are demonstrably high, and the benefits even to those seeking controls are inherently speculative. In the case of scrap iron, export controls failed to reduce prices in 1973, and in fact led to prices that were higher than would otherwise have been the case. Worse, export controls of any kind result in lost foreign exchange earnings and inevitably undermine the reputation of the United States as a stable source of supply. A policy decision with such significant public impact should be openly and objectively determined.

On the basis of our experience in the 1980 proceeding, we have identified five flaws in §§ 7(c) as implemented by the Department's regulations (15 CFR §§ 377.8 et seq.):

1. A hearing is not required: it can either be requested by a party or may be undertaken by the Department on its own motion. The criteria for short supply determinations require extensive factual findings. A full hearing is the most efficient way to assure that the facts are fairly and fully presented. Accordingly, a hearing should be required prior to the imposition of controls or monitoring.

2. Except through the hearing officer (and at his option), there is no opportunity for cross-examination of opposing witnesses. In 1980, the inability to question the "experts" favoring export controls prevented the full and true disclosure of the facts.
3. Under existing regulations, determinations of the Department need not be based upon the record of the proceeding. Why bother having such a procedure, if the Department is allowed to base its actions not on the testimony presented but rather on unknown criteria and untested data?
4. The regulations provide that rebuttal will be allowed in public hearings only by permission of the hearing panel. Given the fact-finding nature of these procedures, the interest in complete data and analysis requires that the right to rebuttal be established.
5. Finally, the regulations do not require the preparation of a written transcript of the proceedings.*/ Elsewhere in this testimony, we demonstrate that judicial review of short supply determinations is appropriate. To facilitate judicial review, a written transcript should be required.

2. Definitions of Critical Terms

Section 7 should be amended to require a formal rulemaking by the Secretary to define and quantify the statutory standards which will govern the imposition of export controls or the initiation of export

---

*/ In 1980, the Department did prepare a transcript, but neither the Act nor the regulations require such a procedure.

monitoring. Specifically, the amendment should require meaningful definitions of the operative terms of § § 3(2)(C) (as incorporated in § 7(a)), 7(b), and 7(c) of the Act: "scarce materials," "serious inflationary impact," and "excessive drain" (§ 3(2)(C); "domestic shortage," "increase in domestic prices," "domestic supply," (§ 7(b) and (c)); "serious adverse impact on the economy or any sector thereof" (§ 7(b)); and "significant adverse effect on the national economy or any sector thereof" and "representative of any industry or substantial segment of an industry" (§ 7(c)).

Without some quantifiable economic or financial content, these standards are not standards at all: the government need only invoke the formula, exports will stop, and an entire industry will suffer. In order to assure that the executive branch is not arbitrary in exercising its delegated authority, it is critical that the criteria established in the Act be defined consistently with either economic theory -- an "analytical approach" -- or with administrative practice in other areas -- an "operational" approach.

The term "scarce material," for example, could be defined either operationally or analytically. Operationally, the definition would conform to similar determinations made by the government. The executive branch has already identified scarce materials under the Strategic and Critical Materials Stockpiling Act, under which the Federal Emergency Management Agency is authorized to supervise the government's procurement and stockpiling of strategic and critical materials. The Stockpiling Act is similar in purpose to Section 7 of the Export Administration Act in that both are designed to protect domestic supplies of scarce materials. Given this similarity, it would be incongruous if the government were able to determine that a material was both "scarce" for purposes of the Stockpiling Act and not "scarce" for purposes of short supply controls.

Analytically, commodities should be distinguished by elasticity of supply. True short supply should be limited to mean only that the supply of a commodity is constrained to such an extent that virtually no increase in price could coax out a supply sufficient to meet demand. By contrast, a commodity the production or supply of which responds dramatically to price should not be considered in short supply unless the price necessary to induce sufficient supply causes material injury to another industry or the domestic economy generally.

But these definitional issues are not necessarily appropriate for Congressional resolution in the first instance. Rather, the Congress should direct the Secretary to consult with independent economists, to receive comments from the various interests potentially affected by short supply controls and to issue a set of definitions in reliance on those submissions. It is advisable to require the Secretary to promulgate definitions within six months after the Act has been renewed. No export controls or monitoring should be authorized until the Secretary has actually promulgated the required definitions.

3. Requirement of Material Injury

Short supply controls should be imposed only upon an affirmative and public showing that exports will be or are a "substantial cause of material injury" to a domestic industry. Injury is a rational prerequisite to relief under nearly all U. S. import laws. Although the standard of injury varies somewhat from statute to statute, its purpose remains constant: it assures that the government is not forced to redress trifles or to suffer the economic and political consequences of placing any unnecessary restraint on imports.

A symmetrical concern requires the equivalent treatment of exports. A material injury test would require that those requesting or proposing controls demonstrate that an identifiable domestic industry will suffer if the commodity is actually exported. In maintaining symmetry with the import statutes, injury would be measured by such factors as reduced sales and profits, unemployment, capacity underutilization, excessive inventories, diminished market shares and the like. The legislative history of this renewal should direct the Department of Commerce to be guided by these factors in determining whether material injury has been or will be sustained because of exports.

In addition, exports should be a primary or substantial cause of the injury: no controls should be imposed when other factors are to blame. Short supply should be precluded when factors other than exports (e.g., general economic conditions or quality differentials) are more important than the exports themselves in causing the injury. Section 201 of the Trade Act of 1974 applies this test by authorizing relief only if imports are a "substantial cause" of injury. "Substantial cause" is defined in the statute to mean a cause which is important and not less significant than any other cause. This is a higher standard than other trade remedy statutes, because relief under Section 201, unlike the anti-dumping or countervailing duty statutes, does not depend upon any showing that the foreign government involved has acted illegally or unfairly. Similarly, no unfair practice must be established before relief is imposed in the short supply context, and therefore the standard for proving injury should be equally stringent.

There is of course general language in the Act which might be interpreted as requiring a minimum showing of material injury before the imposition of controls or monitoring. But the actual cases under § 7 suggest that the Department has not employed as rigorous a standard of injury as that used by the ITC in the import context. Nor does the Act require the Department to publish affirmative findings and supporting economic justifications which reflect the "injury" criteria.

Accordingly, the Act should be amended to require the Secretary, after notice and comment, to publish the affirmative findings, which satisfy the criteria specified, including "excessive drain of scarce materials," "serious inflationary impact of foreign demand," "increase in domestic prices," "domestic shortage," and the like. Second, the Act should be amended to require a showing that the price increase or domestic shortage will lead to material injury, *e.g.*, decreased profits, underutilized capacity, unemployment, *etc*. in the industry affected by exports. Finally, the Act should be amended to require a showing that the material injury demonstrated is not attributable to other equally or more significant causes. We will be pleased to discuss with committee staff suggested language implementing these proposals.

4. *Judicial Review*

The decision to adopt short supply controls or to initiate export monitoring should be subject to judicial review. Short supply controls and monitoring are economic regulatory measures taken in response to what are objective economic conditions. Although substantial refinement of the standards in § 7 is needed, it is clear that they require certain determinations of fact, not the articulation or execution of policy. In this respect, short supply controls are fundamentally different from national security or foreign policy controls authorized elsewhere in the Act. These latter controls, as adjuncts to the President's plenary authority to conduct foreign and military affairs, are not reviewable by the courts under the Administrative Procedure Act ("APA").

But Congress generally has subjected economic regulatory actions which do not involve foreign policy or national security to judicial review. Indeed, the courts have recognized that immunity from review is the rare exception, limited almost exclusively to the President's international and military decisions.*/ A prominent statutory example of the presumption of reviewability is the Emergency Petroleum Allocation Act of 1973 which authorized the President to respond to the most important "short supply" crisis in history. Specifically, the President was delegated authority to control domestic prices and supplies of crude oil and refined petroleum products "for the purpose of minimizing the adverse impact of . . . shortages and dislocations on the American people and the domestic economy." In actions strikingly similar to those under § 7(a), the executive branch undertook a comprehensive analysis of the supply, demand, and price characteristics of the industry and issued a network of complex regulations affecting various product categories and industry sectors. Like virtually all other economic regulatory measures, these agency actions were subject to judicial review and have been commonly overturned when the statutory standards were not satisfied.

Other statutes reinforce the presumption in favor of review of actions based on factual, rather than policy, decisions. These include the Economic Stabilization Act of 1970, the Tariff Act of 1930, the Federal Trade Commission Act, and the organic statutes governing the Postal Service, the Federal Home Loan Bank Board, and the Internal Revenue Service to name just a few.

---

*/ Attached for the record is a memorandum outlining the statutory precedents for review of economic regulatory actions, such as short supply controls and monitoring.

As these statutory precedents suggest, an exemption of economic determinations from judicial review is the exception: the interest in assuring the fair and expert application of factual criteria generally demands some avenue of review, especially when the President's foreign affairs or national security powers are not involved. Short supply controls (or monitoring) which are triggered by findings of domestic shortages, high prices, export demand, and economic impact, do not differ in any meaningful way from the corresponding provisions of the economic regulatory statutes just cited. Accordingly, the Act should be amended to provide that the functions exercised under sections 7(a)-(c) shall be subject to the judicial review provisions of the APA, 5 U.S.C. §§ 701-706.

5. Sanctity of Contracts

ISIS joins the consensus that the executive branch should be statutorily barred from cancelling the performance of export contracts executed prior to the imposition of controls. A "sanctity of contracts" provision would exempt existing contracts from export controls, timely preserving the price structure of the commodity in question and retaining much of what is left of the United States' reputation as a reliable source of supply.

Since President Reagan's embargo on the export of equipment destined for the Soviet natural gas pipeline, the impetus towards a "contract sanctity" provision has generally concentrated on the foreign policy provisions of the Act. The Administration's proposal, introduced April 4, 1983, contains such an amendment.

The rationale for contract sanctity extends to export controls imposed for any reason, including short supply. Last session, the Congress adopted a sanctity provision in the four-year extension of the Commodity Futures Trading Commission, which limited the authority of the President to control exports of agricultural commodities. Specifically, the Congress prohibited the application of controls to export contracts which required delivery within 270 days of the effective date of the controls, except in times of war or national emergency. ISIS believes this approach should be extended to include all types of exports.

CONCLUSION

The scrap iron industry has had the unfortunate experience of being required to protect its export markets against the repeated and unwarranted threat of monitoring or controls pursued by segments of the steel industry. It is, thus, very clear to us that short supply controls call out for recognition that the three major segments of the Export Administration Act are uniquely different and should be handled differently. The national security and foreign policy sections require flexibility, instantaneous response to challenge, and probably non-reviewable discretion on the part of the Administration.

In the short supply area, however, there is every reason to challenge that flexibility and lack of review of administrative discretion. The issue is not the relationship between American and foreign interests, it is not the challenge to the American need for security or political propriety -- the issue in short supply controls is generally (and always in the case of scrap iron) a matter of which American economic interest will be helped and which American economic interest will be harassed or denied.

Because the government in the short supply role is an economic handicapper, there is need to set specific standards against which appeals for handicapping assistance can be measured. There is need for criteria to be met in the attempted proof that harm will result in the absence of government action and there is need for judicial review of these actions to confirm that the criteria are not merely mouthed but, in fact, are honored both in letter and in spirit.

MEMORANDUM

RE: JUDICIAL REVIEW OF DETERMINATIONS TO INSTITUTE SHORT SUPPLY MONITORING OR CONTROLS PURSUANT TO SECTION 7 OF THE EXPORT ADMINISTRATION ACT OF 1979

SUMMARY

This memorandum addresses the desirability of amending Section 13(a) of the Export Administration Act of 1979 ("Act") to make clear that judicial review is available for actions of the Secretary of Commerce under the short supply provisions of the Act (Section 7).

The argument in favor of judicial review proceeds from the observation that short supply controls and monitoring are economic measures taken in response to objective economic conditions. They are designed to serve a function that stands independently of the national security and foreign policy concerns of the United States, which are protected by other provisions in the Act. Congress has generally subjected economic regulatory actions which do not involve foreign policy or national security to judicial review. As discussed by Judge Leventhal in the leading case of Amalgamated Meat Cutters v. Connally, 337 F. Supp. 737 (D.D.C. 1971) (three-judge panel), immunity from judicial review is the rare exception, "arising only in such fields as foreign affairs and national defense" and in other unique, inapplicable circumstances. Under these principles, Section 13(a) should be amended to make it clear that determinations to institute short supply monitoring or controls under the Act should be subject to judicial review.

This memorandum is organized as follows. First, the relevant statutory provisions are laid out (§ I). Second, it is established that short supply controls are domestic economic regulatory measures, which do not involve the presumptively unreviewable authority of the President in matters of foreign affairs and national security (§ II(A)). Third, significant statutory precedents are discussed to establish that economic regulatory decisions like those under § 7(a)-(c) are proper subjects for judicial review (§ II(B)). Finally, a specific amendment to the exemption from review is suggested (§ III).

I. STATUTORY BACKGROUND

A. Operative Provisions

The Export Administration Act of 1979*/ authorizes the President to regulate the export of certain goods and commodities in order to protect the United States' national security, foreign policy, and economic interests. Among the several objectives of the Act is that of controlling the export of goods which are found to be scarce in the domestic economy. The so-called "short supply" provisions of the Act, contained in Section 7, implement policy articulated in Section 3(2)(C):

> It is the policy of the United States to use export controls only after full consideration of the impact on the economy of the United States and only to the extent necessary -
>
> (C) to restrict the export of goods where necessary to protect the domestic economy

---

*/ 50 U.S.C. App. § 2401 et seq.

> from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand.

Under Section 7(a) of the Act, the President is authorized

> to prohibit or curtail the export of any goods subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States

for the purpose of carrying out the policy stated in section 3(2)(C), supra.

Section 7(b) of the Act provides for the monitoring of exports, and contracts for exports, for the purpose of facilitating the policy of Section 3(2)(C),

> when the volume of such exports in relation to domestic supply contributes, or may contribute, to an increase in domestic prices or a domestic shortage and such price increase or shortage has, or may have, a serious adverse impact on the economy or any sector thereof.

Section 7(c) allows, and prescribes procedures for, petitions for the monitoring of supplies or the control of exports of metallic scrap. Petitions are only permitted from a

> representative of an industry or a substantial segment of an industry which processes metallic materials capable of being recycled with respect to which an increase in domestic price or a domestic shortage of such materials resulting from increased exports would adversely affect the national economy or any sector thereof . . . .

In the past, the export of numerous commodities has been controlled under § 7(a) and its precursors for one or more fiscal years through the requirement of licenses, prior approvals, and related means. Monitoring under § 7(b) has also been imposed. Only one petition under § 7(c) has been filed since that provision was added to the Act in 1979, and it was denied by the Department of Commerce.*/

B. Judicial Review

Section 13 of the Act appears to exempt monitoring and control determinations under the short supply provisions from judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 13(a) provides in full:

> Sec. 13(a) EXEMPTION. - Except as provided in section 11(c)(2) [**/], the functions exercised under this Act are excluded from the operation of sections 551, 553 through 559, and 701 through 706 of Title 5, United States Code.

Sections 701-706 of Title 5 provide specifically for judicial review by the federal courts of the actions of federal administrative agencies, and it prescribes the standards to guide that review.

There is little legislative history to illuminate Section 13(a). A precursor of the Act specifically allowed the application of the APA's judicial review provisions to the President's export control actions.***/ Subsequently, in light of both significant national security aspects of export control and the

---

*/ Petition of the Ferrous Scrap Consumers Coalition, filed March 26, 1980 (45 *Fed. Reg.* 25034), denied July 11, 1980 (45 *Fed. Reg.* 47701).

**/ The exception stated allows for APA procedures in the promulgation of regulations and the assessment of sanctions pursuant to the foreign boycott provisions of the Act, section 8.

***/ Second Decontrol Act of 1947. *See* H.R. Rep. No. 188, 80th Cong., 1st Sess. (1947).

strictly limited duration of the President's authority under the Act, the exemption from the APA became broader.*/ By 1969, the exemption provision had substantially reached its present form, its scope well in excess of the "temporariness" and foreign affairs rationales which had originally justified it.

II. DISCUSSION

A. Short Supply Controls Are Domestic Economic Regulatory Measures Which Stand Independently of the Presumptively Unreviewable Authority of the President to Conduct Foreign or Military Affairs.

By its terms and by its application, the short supply provisions of the Act were designed to protect the domestic economy from the impact of exports in objectively-stated (but currently undefined) circumstances. In contrast to national security or foreign policy controls, short supply controls and monitoring are imposed for the purpose of "protecting the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand." Act, § 3(2)(C). The operative terms in this statement of policy are economic, turning on the fundamental concepts of supply, price, and demand: "scarce materials," "inflationary impact," "foreign demand." The provisions on export monitoring (§ 7(b)) and petitions (§ 7(c)) are similar: "increase in domestic prices," "domestic shortage," "serious adverse impact on on the economy or any sector thereof." Although substantial refinement of these standards is urgently needed, it is clear that they initially involve determinations of fact, not the articulation or execution of policy.*/

---

*/ Export Control Act of 1949, § 7:

> The functions exercised under this Act shall be excluded from the operation of the Administrative Procedure Act [citation omitted] except as to the requirement of section 3 thereof [respecting public information].

The Senate Report accompanying the 1949 Act is illuminating:

> By Section 7, provision is made that Section 3 alone (the public information requirement) of the Administrative Procedure Act shall be applicable to the export control program in view of the temporary character of this legislation and its intimate relation to foreign policy and national security. Sen. Rep. No. 31, 81st Cong., 1st Sess. (1949) (emphasis supplied).

From the beginning, Congress intended the short supply provisions to respond to concrete conditions of the domestic economy. The Export Control Act of 1949 ("ECA") contained a statement of policy similar to current § 3(2)(C). In the reports accompanying the ECA, Congress indicated that exports had aggravated post-war shortages of key commodities. Sen. Rep. No. 31 (Feb. 4, 1949). Subsequently, because of the 1973 devaluation of the dollar and the growing worldwide demand for raw materials,

---

*/ The existence of high prices which are alleged to be attributable to exports may lead the Department of Commerce to impose monitoring or controls, if it determines further that the domestic economy has been adversely affected. Conversely, if the Department finds either that domestic stocks are adequate, see 44 Fed. Reg. 36376 (June 22, 1979) (removing export restrictions on petroleum coke on the ground that stocks exceeded domestic needs), or that domestic prices have not risen significantly in response to exports, see 45 Fed. Reg. 47701 (July 16, 1980) (rejecting petition for imposition of controls on or monitoring of ferrous scrap exports on the ground that domestic prices had declined since the filing of the petition), relief under § 7(a) or (b) will be denied.

Congress strengthened short supply controls by providing for monitoring of significant exports.*/ Thus, by 1974, Congressional concern had shifted to embrace both actual shortages and anticipated shortages, but the underlying economic rationale, and the burden of proof remained intact.

The legislative history of short supply provisions confirms that Congress intended a sharp distinction between these price/market controls and the military/national security controls authorized by § 5 and those for foreign policy in § 6 of the Act. According to § 3(2)(A) of the Act, the national security controls are designed

> to restrict the export of goods and technology which would make a significant contribution to the military potential of any country or combination of countries which would prove detrimental to the national security of the United States.

Act, § 3(2)(A). Similarly, the foreign policy controls are designed (see § 3(2)(B))

> to restrict the export of goods and technology where necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations.

Each of the operative terms involves determinations which are adjuncts to the President's constitutional authority to conduct foreign and military affairs. The short supply control and monitoring power is not. In light of its objective and quantifiable underpinnings, the short supply authority is comparable to numerous economic regulatory authorities, the exercise of which is subject to judicial review. Although the Act establishes regular procedures for the control of exports under these sections 5 and 6, it does not purport to establish substantive criteria limiting the exercise of the President's inherent authority.[*]

---

*/ Export Administration Amendments of 1974, § 3(a), 88 Stat. 1552, amending 50 App. U.S.C. § 2403.

As foreign policy and national security actions of the executive branch, export controls under §§ 5 and 6 of the Act may be properly nonreviewable under § 13 of the Act. Review is generally unavailable for such actions in order to preserve the President's constitutional discretion in this area. Thus, for example, APA review is not available for administrative decisions under the Trading with the Enemy Act, 50 U.S.C. App. § 32(a), Schilling v. Rogers, 363 U.S. 666 (1960)[**]; most immigration decisions, Ludecke v. Watkins, 335 U.S. 160 (1947)[***]; significant decisions regarding the armed forces, Gentila v. Pace, 193 F.2d 924 (D.C. Cir. 1951), cert. denied 72 S.Ct. 556

---

[*] It is not clear whether such a limitation would survive constitutional challenge. United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936) (establishing the "plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations"). See Ex parte Garland, 4 Wall. 333 (1866) (the Presidential pardon authority is not subject to legislative control); Myers v. United States, 272 U.S. 52 (1926) (Congressional restriction on the President's control over executive personnel is invalid).

[**] Determination that German national was not entitled to return of property held not reviewable under the APA.

[***] Deportation of enemy aliens held not reviewable under the APA.

(1952)[*] and decisions directly affecting relations with a particular foreign state, Spacil v. Crowe, 489 F.2d 614 (D.C. Cir. 1974).[**]

B. Short Supply Determinations, Like Other Economic Regulatory Decisions, Are Proper Subjects For Judicial Review.

There is a presumption that economic regulatory actions which are not committed by Congress to executive discretion over foreign policy or security affairs are generally subject to review. A leading authority is Judge Leventhal's opinion in Amalgamated Meat Cutters v. Connally, 337 F.Supp. 737 (D.D.C. 1971), which upheld the legality and constitutionality of the Economic Stabilization Act of 1970. The judge reviewed the range of statutory provisions on judicial review and concluded that

> there are occasions when Congress has so committed matters to executive discretion as to avoid judicial review or to remove judicial review for error of law, including abuse of discretion, restricting it to the narrow function of correcting flagrant disregard of a clear-cut legislative mandate.

337 F. Supp. at 760. But the court immediately thereafter established, (*Id*. (citations omitted, emphasis supplied)), that

> *These occasions are* . . . *the rare exception* arising only in such fields as foreign affairs and national defense, or where Congress has expressly or impliedly directed that the Executive proceed without statement of reasons because the functioning must rest

---

[*] Findings of Army Discharge Review Board held not reviewable under the APA.

[**] Decision of State Department to recognize claim of foreign sovereign immunity held not reviewable under the APA.

> on confidence or be conducted with extraordinary expedition, or where the legislature manifests an intent to avoid review in order to further its objective, as when a failure to exercise discretion to exempt is made non-reviewable in furtherance of the objective of narrow exemptions.

None of these extraordinary circumstances applies to short supply controls. Nothing in the legislative history of the Act suggests either that short supply controls implicate foreign affairs or national defense or that Congress intended to establish immunity from judicial review in order to improve or expedite the administration of such controls.

As a matter of policy, reviewability is particularly appropriate with respect to provisions, such as the short supply authority, in statutes requiring an evaluation of economic conditions as a prerequisite for executive action. The following statutory examples illustrate this point:

(i) The Emergency Petroleum Allocation Act of 1973 ("EPAA") as amended,*/ authorized the President to control domestic prices and supplies of crude oil and refined petroleum products. In terms that are strikingly similar to the corresponding language of the short supply provisions, that authority was to "be exercised for the purpose of minimizing the adverse impacts of such shortages and dislocations on the American people and the domestic economy." EPAA, § 2, 15 U.S.C. § 751(b). Congress clearly intended to give the President broad authority to promulgate crude oil regulations and thereby to marshall short supplies and equitably assign them to particular needs. Consumers Union of U.S., Inc. v. Sawhill, 525 F.2d 1068 (T.E.C.A. 1975). Pursuant to this authority, the executive branch undertook a comprehensive analysis of the supply, demand, and price characteristics of the industry and issued a network of complex regulations imposing allocation, inventory, and price requirements on various product categories and industry sectors. Congress specified that agency action under the EPAA is subject to judicial review, Texaco Inc. v. Department of Energy, 616 F.2d 1193 (T.E.C.A. 1979), and those actions have been overturned when it appeared that the statutory standards were not satisfied.*/

---

*/ 15 U.S.C. § 751 et seq.

(ii) The Economic Stabilization Act of 1970**/ authorized the President to issue orders and regulations to stabilize prices, rents, wages, salaries, dividends, and interest, consistent with orderly economic growth. The extensive factual findings used to support the controls were made subject to judicial review to assure the accuracy and fairness of the executive action.***/

---

*/ Atlantic Richfield Co. v. Zarb, 532 F.2d 1363 (T.E.C.A. 1976).

**/ Title II, Pub. L. 91-379, 84 Stat. 799 (Aug. 15, 1970) as amended.

***/ See Amalgamated Meat Cutters & Butcher Workmen v. Connally, 337 F. Supp. 737 (D.D.C. 1971).

(iii) The Tariff Act of 1930[*] requires that the International Trade Commission make certain findings of fact before countervailing or antidumping duties may be imposed on imports. Specifically, the ITC is required to determine whether there is a reasonable indication that the imports have "(a) caused a U.S. industry to be materially injured or [to be] threatened with material injury or (b) materially retarded the establishment of an industry in the United States." These findings require investigation and analysis substantially similar to that under § 7 of the Act. Each of these findings is reviewable by the Court of International Trade. 19 U.S.C. § 1516(a).

Similarly, the actions taken by the ITC in § 337 actions, regarding unfair trade practices in the importation of goods into the United States involve standards of economic injury similar to those under the countervailing duty statute and are subject to judicial review. 19 U.S.C. § 1336.

(iv) Section 232(b) of the Trade Expansion Act of 1962, as amended, provided that, if the Secretary of the Treasury found that an "article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security," the President was authorized to

> take such action, and for such time, as he deems necessary to adjust the

---

[*] 19 U.S.C. § 1510 et. seq.

> imports of [the] article and its derivatives so that ... imports [of the article] will not threaten to impair the national security.

§ 232, Pub. L. No. 87-794, 76 Stat. 877, as amended, previously codified at 19 U.S.C. § 1862(b) (Supp. IV). Pursuant to this authority, the President attempted to adjust imports of petroleum and petroleum products through licensing fees and other allocational method. Despite the considerable discretion delegated to the President to control foreign commerce, and despite the general immunity of the President's national security decisions from judicial review, the courts have commonly reviewed the actions taken under § 232 to assure that the factual and legal predicates to such action were clearly and lawfully established. Federal Energy Administration v. Algonquin SNG, Inc., 423 U.S. 923 (1976), Pancoastal Petroleum Ltd. v. Udall, 348 F.2d 805 (D.C. Cir. 1965); Skelly Oil Co. v. Udall, 288 F. Supp. 109 (D.D.C. 1968).

Statutes providing for review of other economically-based executive action govern the Federal Trade Commission, 15 U.S.C. § 45; Federal Home Loan Bank Board, 12 U.S.C. § 1464e; the Board of Governors of the Postal Service, 39 U.S.C. § 3628; and the Internal Revenue Service, 26 U.S.C. § 7442. In some cases, a particular court with particular expertise or limited jurisdiction is designated to perform the review.

III. CONCLUSION

The short supply provisions, under § 7 of the Export Administration Act are similar to economic regulatory authorities which are subject to judicial review. They stand independently of the foreign policy and national security powers of the executive branch under other sections of the Act. Therefore, judicial review of short supply actions by the executive branch thereunder is desirable.

IV. SUGGESTED AMENDMENTS

Section 13(a) should be amended to read as follows (additions underlined):

> Sec. 13(a) Exemption. - Except as provided in sections 7(c)(11) and 11(c)(2), the functions exercised under this Act are excluded from the operation of sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.
>
> § 7(c)(11) Judicial Review. - The functions exercised by the President or the Secretary under Sections 7(a)-(c) of this Act shall be subject to sections 701 through 706 of title 5, United States Code.

John L. Oberdorfer
Ralph G. Steinhardt

Senator **Heinz**. Mr. Kaplan, thank you very much.

Senator Proxmire.

Senator **Proxmire**. I'll be as brief as I can, Mr. Chairman. I realize you've been very patient.

EXPORT ALASKAN OIL?

Mr. Marlowe, I raised the question of export of Alaskan oil with Mr. Olmer. I don't know if you heard that or not. I felt that if we did export such oil savings should be passed on to the consumer. His response I thought was weak, but he said no decision had been made to sell to Japan.

Do you have any reason to believe the administration would like to export Alaskan oil to Japan?

Mr. **Marlowe**. Senator, I have a gut feeling that they definitely would like to export oil to Japan. I think at the very least as a dollars and cents matter they believe they can produce increased Federal revenues. We would challenge that contention. Nevertheless, I think that they would like to do that.

I also think that it enters into their trade plans with the Japanese. It's a convenient way of dealing with a very difficult problem with Japan without doing anything to help the manufacturing and agricultural sectors of our economy.

Senator **Proxmire**. It would tend to reduce the adverse balance of trade.

Mr. **Marlowe**. Substantially reduce the adverse balance of trade that Japan has with the United States without providing any real benefits to those parts of our economy that are suffering.

Senator **Proxmire**. In turn, we would have to import oil from other places.

Mr. **Marlowe**. In point of fact, our overall balance of trade would suffer because with the going price of oil, even with the current fluctuations, we would likely pay more for whatever oil we imported than we are now paying to get the Alaskan oil.

Senator **Proxmire**. It seems to me they would be able to see that. I can't understand what real motivation they would have here. You say that it would ease the relationship with Japan because that particular trade balance would be closer, right?

Mr. **Marlowe**. It would certainly ease it from Japan's point of view, and I would presume that the administration is anxious to help Japan get off the hook and that would be beneficial to the administration. I have no idea whether that is a motive of theirs or not.

Senator **Proxmire**. Can you shed any light on the matter of shipping Alaskan oil to Louisiana to be put into the strategic reserve?

Mr. **Marlowe**. I've always viewed the oil that's located in Alaska is a precious, vital domestic resource. Clearly, it is located in Alaska and it is a vital resource and whether it needs to be moved to Louisiana to be declared officially a part of our strategic petroleum reserve, I share your concerns about that.

Senator **Proxmire**. Now the AFL-CIO argues in its statement that a primary reason for our trade problem in Japan is the undervalued yen which makes Japanese goods cheap in the U.S. market. By exporting oil we would be replacing commodity exports with labor intensive imports, therefore losing jobs. How important is the value of the yen to Japanese exports?

Mr. **Marlowe**. May I ask Dr. Cooper to join with me in answering that?

Dr. **Cooper**. Well, clearly, we believe that it plays a significant role. The administration in the Economic Report of the President and annual report of the Council of Economic Advisers' took quite the opposite position. Currency values are very, very difficult to measure precisely, but we believe that they play a significant role and the administration believes that they play no significant role. I'm certain we could provide you with specifics on that impact.

[Additional information supplied for the record follows:]

American Federation of Labor and Congress of Industrial Organizations

815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5000

EXECUTIVE COUNCIL

LANE KIRKLAND PRESIDENT
THOMAS R. DONAHUE SECRETARY-TREASURER

John H. Lyons
B. Frank Raftery
Glenn E. Watts
Angelo Fosco
Lloyd McBride
Wm. W. Winpisinger
John DeConcini
Joyce D. Miller
Frank Drozak
Richard I. Kilroy
William H. Bywater
Thomas W. Gleason
Murray H. Finley
Sol C. Chaikin
Charles H. Pillard
Kenneth T. Blaylock
William H. Wynn
Wayne E. Glenn
John J. Sweeney
James E. Hatfield
Vincent R. Sombrotto
Marvin J. Boede
Frederick O'Neal
Albert Shanker
Edward T. Hanley
J. C. Turner
Alvin E. Heaps
John J. O'Donnell
Robert F. Goss
Douglas A. Fraser
Barbara Hutchinson
Gerald W. McEntee
Patrick J. Campbell

140

May 5, 1983

Honorable John Heinz
Chairman, House International
Finance and Monetary Policy
Subcommittee
Committee on Banking, Housing
and Urban Affairs
Washington, D.C. 20510

Dear Mr. Chairman:

At a recent hearing before your subcommittee on the Export Administration Act, I was asked about the valuation of the Dollar and the Yen.

As we stated in our testimony, the AFL-CIO is very concerned about the overvaluation of the Dollar relative to the Yen. This overvaluation has put U.S. producers at a very serious competitive disadvantage in competing with imports and has made U.S. exports less competitive in world markets.

The dollar should have been falling in terms of the Yen in recent years in view of the extremely large U.S. trade deficit with Japan and the U.S. trade deficit world-wide. A fall in the value of the dollar would help correct the trade deficit with Japan by reducing the price of U.S. produced goods relative to Japanese goods.

The more rapid rate of inflation in the U.S. than in Japan also should have caused the dollar to fall in terms of the Yen. The currency of a country with a more rapid inflation rate normally experiences a fall in the value of its currency which corrects for the change in relative prices due to the different inflation rates. This again is contrary to the experience of the last few years.

The reason often given for the overvaluation of the dollar is the high interest rate policy in the U.S. which has encouraged foreigners to send money to the U.S. to take advantage of the high returns.

High interest rates should not be used as means for correcting for a balance of payments deficit. High interest rates severely damage U.S. industry by artificially raising the prices of all U.S. goods relative to imports through their effect of artificially raising the value of the dollar, and they raise the cost of doing business by raising the cost of borrowing money.

Sincerely,

Howard Marlowe

Howard Marlowe
Associate Director,
Department of Legislation

Senator **Proxmire**. Now I've just got a question for Mr. Merrigan and Mr. Kaplan together because of the interesting contrast. I had to be absent from the room when you testified, but I had a chance to study your testimony. Here we have an example of two businessmen disagreeing over government regulation. Mr. Irving Kaplan likes the regulation because it benefits his industry. Mr. Merrigan is opposed to the regulation because that would probably benefit him.

Could you gentlemen give us a very short statement about how the public would benefit from adopting your recommendation?

METAL RECYCLING

Mr. **Merrigan**. I think the United States has a vital public interest in metal recycling at all levels, whether it be domestic or in foreign trade. Recycling of metals, et cetera, as you know, saves tremendous amounts of energy. It also helps cities and States clean up the solid waste stream. It takes some metals which have an adverse hazardous waste impact out of the stream and here we have a procedure set up only for recycled metals in the Export Administration Act which would make it impossible under certain conditions for us to even export those metals.

So we think the administration here is clearly correct in the national interest, not just for recycling, to eliminate this restriction on exports.

Senator **Proxmire**. Mr. Kaplan.

Mr. I. **Kaplan**. Senator, we support the retention of section 7(c) in order that both sides of this question be given an opportunity to present the facts fairly in an open hearing to the Department of Commerce. The Department of Commerce will have the latest updated information from all parties from which to render a decision with respect to monitoring our exports, and that's exactly why we want to keep this particular provision in the act.

Senator **Proxmire**. So you can state your position. If Mr. Merrigan is right, they can side with him. If you're right, they can side with you.

Mr. I. **Kaplan**. The facts would determine the decision, yes.

Senator **Proxmire**. I see. Thank you.

Senator **Heinz**. Senator Proxmire and gentlemen, thank you very much. We appreciate your testimony.

Our next witnesses are Mr. Eugene J. Milosh and Mr. Richard F. Hoffman. Mr. Milosh, would you please proceed. I note that you have a very comprehensive report and testimony here. Without objection, we will make sure that all of it is a part of the record.

STATEMENT OF EUGENE J. MILOSH, EXECUTIVE VICE PRESIDENT, AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS, ACCOMPANIED BY ANDREW S. KRULWICH, ESQ., WELLFORD, WEGMAN, KRULWICH, GOLD & HOFF; AND SUZI EVALENKO, AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

Mr. **Milosh**. Mr. Chairman, my name is Gene Milosh, executive vice president of the American Association of Exporters and Importers. With me are Andrew Krulwich of the Association's law firm of Wellford, Wegman, Krulwich, Gold & Hoff; and Suzi Evalenko, on my right, of the association.

With 1,400 U.S. company members nationwide, AAEI is the only organization in the country specifically representing interests of exporters and importers. AAEI is pleased to have this opportunity to share our thoughts and recommendations on renewal of the Export Administration Act.

We are not prepared today to make detailed comments on the administration's bill. We believe, however, that the general thrust and tone of the bill creates many problems for our members.

While your bill, Mr. Chairman, has some problems, we find it a much more constructive approach and we would be pleased to work with you to resolve our difficulties.

Within the limitation of time, we are limiting our remarks to the enforcement aspects. With your permission, I would like to focus my remarks on the institutional framework for implementing the act and particularly on proposals relating to enforcement authority and penalties for violation of the act.

We have heard much about a supposed contradiction between the objective of insuring that the United States maintains a military lead over its adversaries and the goal of promoting U.S. exports to improve the health of the U.S. economy. I would suggest that these two goals are not incompatible. They are in many ways mutually dependent for their success.

The loss of competitive ability of U.S. high technology companies caused by unnecessarily restrictive controls is but one such threat to the country's security.

As to enforcement of the act, it has been variously proposed to remove the Commerce Department or the Customs Service from enforcement and penalty procedures. We think that neither alternative is good. Each agency brings experience and information to the enforcement task which is important in the field and ultimately in determining the nature and seriousness of violations and appropriate penalties.

There are problems. Customs officers are frequently confused about whether a shipment needs a license, but now that they have gotten some experience in enforcing this law, we would not wish to see completely different officers in the field learning the ropes all over again.

Better direction from the Commerce Department can improve the process a great deal.

In the last analysis, we believe that the current arrangement in which the Customs Service has an active role under the direction of the Commerce Department, coupled with the suggestions we offer today for improving this activity, will make enforcement both fairer and more effective.

I would like to share with you the principles which have guided our thinking on enforcement practices and offer some recommendations.

AAEI believes that enforcement must be effective, expeditious and fair, and we believe that industry cooperation in complying with the act and in actively aiding Government enforcement efforts can be improved. We suggest that the Government can do this by providing incentives to exporters for voluntary disclosure and we endorse the prepared statements of Mr. Hoffman on this panel today.

AAEI further believes that both enforcement officials and industry need to have better guidance on procedures which will be followed when shipments are detained. We urge the Congress to direct the executive branch to publish regulations detailing specific responsibilities of each of the agencies engaged in enforcement so that exporters will know what to expect and Customs officers will know where to get quick online direction from the Commerce Department.

AAEI believes it is essential that field officers be properly trained in what the export controls laws and the regulations permit or forbid. We understand this is not now the case. This has resulted in unnecessary detentions of goods and perhaps undetected illegal exports as well.

AAEI believes that proposals which have been made to permit individual officers to make warrantless arrests, searches, and seizures raise questions of constitutionality and unnecessary obstruction of legitimate business.

We do not believe that an imperative need case for warrantless arrest can be made which would justify denying due process protection to the individual in this way. While we appreciate that it may be necessary for the Government to move faster in conducting searches and seizures to prevent illegal exports than it is possible if a court warrant were needed, we believe that individual officers should be required to get a go-ahead authorization from the District Director or some other supervisory official who has been designated in published regulations to act in the Director's stead. This would assure some oversight of whether there is probable cause to believe an illegal export is about to take place.

Exporters report that they have found out from a variety of customers abroad that shipments did not arrive. This is not acceptable. We believe that enforcement officers should be statutorially required to notify exporters no later than 72 hours after detaining their goods.

AAEI believes that your proposal, Mr. Chairman, which empowers the Secretary of Commerce to impose an import prohibition against a violator of the act involves a penalty of such severity that an administrative determination to oppose it cannot afford a high enough level of procedural protection.

More generally, we doubt that such a general ban as has been proposed could be administered without a nightmare of paperwork for importers who have violated no law. Currently, there is no U.S. licensing system for imports in which the end user is identified. With a precise and elaborate system like the export license procedure under the Export Administration Act, we believe the Government would have to monitor all commercial operations of a company to be sure it does not buy the prohibited goods from the nonrelated importer in the United States for importing them himself.

We are concerned that lacking clear language as to which violations this penalty should cover, the proposal would permit this undue intrusion into normal business activities when only a regulatory violation had occurred.

AAEI believes that in light of proposed penalties which include loss of property or the right to engage in import and export activities, that full court review is vital to the protection of exporters' rights. No less important is court review of whether an agency has provided in its proceeding against an individual the right of adequate representation and legal protections.

We urge the Congress to provide in the act for de novo court review of agency enforcement and penalty procedures.

We have reviewed the provisions of the act relating to judicial review and in our prepared testimony have suggested where we believe are shortcomings. I should like to note here that AAEI believes there are matters that do not pertain to determination of national security needs or foreign policy objectives that are a fit subject for at least limited independent review. Such review can assure that the act is administered consistent with basic standards of due process as the declaration of policy in the act directs.

We would be pleased to discuss these subject areas with you or to answer any questions you may have on this or any other matters raised in our testimony. I thank you for this opportunity to present our association's concerns about this very important legislation.

[Complete statement follows:]

EX IM American Association of
Exporters and
Importers 11 West 42nd Street, New York, NY 10036 (212) 944-2230

TESTIMONY OF EUGENE MILOSH
ON BEHALF OF THE
AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS
BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY OF THE
SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
ON
RENEWAL OF THE EXPORT ADMINISTRATION ACT OF 1979

APRIL 14, 1983

Good day, Mr. Chairman, members of the Committee. My name is Eugene Milosh. I am Executive Vice President of the American Association of Exporters and Importers (AAEI). I am sorry to say that Mr. Harrison Wellford, who had planned to be with us today, is not able to be here. With me are Mr. Wellford's partner, Andrew Krulwich, of the Association-member law firm of Wellford, Wegman, Krulwich, Gold and Hoff, and Suzi Evalenko, the Association's Director of Export Activities.

With 1400 U.S.-company members nationwide, AAEI is the only organization in the country specifically representing the interests of exporters and importers.

AAEI is pleased to have this opportunity to share our thoughts and recommendations on renewal of the Export Administration Act. A number of bills have been introduced in this Congress to provide new direction for export controls policy and implementation. We have addressed many more of these in our prepared statement for the Committee than we have time to discuss with you today, but which are nevertheless important to us. I would ask that that statement be made part of the record of these proceedings.

We are not prepared today to make detailed comments on the Administration's bill. We believe, however, that the general thrust and tone of the bill creates a lot of problems for our members. While your bill, Mr. Chairman, has some problems, we find it a much more constructive approach. We would be pleased to work with you to resolve our difficulties.

With your permission, I should like to focus my remarks on the institutional framework for implementing the Act, and particularly on proposals relating to enforcement authority and penalties for violation of the Act.

We have heard much about a supposed contradiction between the objective of ensuring that the U.S. maintains a military lead over its adversaries, and the goal of promoting U.S. exports to improve the health of the U.S. economy. I would suggest to you that these two goals are not incompatible. They are, in many ways, mutually dependent for their success. The loss of competitive ability of U.S. high technology companies, caused by unnecessarily restrictive controls, is but one such threat to the country's security.

For this reason, AAEI believes that the Department of Commerce is the most appropriate agency to have primary responsibility for the issuance of export licenses. Presently, the Defense Department and the National Security Council have an active consultative role in ensuring that export control policy and licensing decisions take into full account military defense needs.

This is not to say that exporters don't have problems with the Commerce Department in getting information about what is licensable. Uncertain answers can, and have, lead to later problems with enforcement officials.

We would suggest, Mr. Chairman, however, that expectations for a new agency to administer export controls may be unrealistic. A new agency would immediately face a number of start-up problems, including new personnel reporting and organization procedures -- problems which must be resolved before the actual work can move forward. We would anticipate that the backlog of applications (which has recently been whittled down) would again rise significantly, and could bring future export business needing licenses to a near halt.

The experience of a recent government reorganization of trade functions provides an example, we believe, of the disruption and delay that accompany such shifts of activity.

As to enforcement of the Act, it has been variously proposed to remove the Commerce Department, or the Customs Service, from enforcement and penalty proceedings. We think that neither alternative is good.

Each agency brings experience and information to the enforcement task which is important in the field, and ultimately in determining the nature and seriousness of violations and appropriate penalties.

There are problems. Customs officers are frequently confused about whether a shipment needs a license. But now that they have gotten some experience in enforcing this law, we would not wish to see completely different officers in the field, learning the ropes all over again. Better direction from the Commerce Department can improve the process a great deal.

In the last analysis, we believe that the current arrangement (in which the Customs Service has an active role under the direction of the Commerce Department) -- coupled with the suggestions we offer today for improving this activity — will make enforcement both fairer and more effective.

I would like to share with you the principles which have guided our thinking on enforcement practices and to offer some recommendations.

- AAEI believes that enforcement must be effective, expeditious and fair.
- AAEI believes that industry cooperation in complying with the Act (and in actively aiding government enforcement efforts) can be improved. We suggest that the government can do this by providing incentives to exporters for voluntary disclosure of possible violations. We believe that uniform regulations governing procedures that will be followed when individuals come forward, and mitigation of penalties in light of cooperation, would go a long way toward removing the present uncertainty that accompanies such disclosures, and would maximize business cooperation.
- AAEI believes that both enforcement officials and industry need to have better guidance on procedures which will be followed when shipments are detained. We urge the Congress to direct the Executive Branch to publish regulations detailing specific responsibilities of each of the agencies engaged in enforcement, so that exporters will know what to expect and Customs officers will know whare to get quick on-line direction from the Commerce Department.

- AAEI believes that it is essential that field officers be properly trained in what the export controls laws and the regulations permit or forbid. We understand that this is not now the case. This has resulted in unnecessary detentions of goods and perhaps undetected illegal exports as well.
- AAEI believes that proposals which have been made to permit individual officers to make warrantless arrests, searches and seizures raise questions of constitutionality and unnecessary obstruction of legitimate business.

We do not believe that an imperative-need case for warrantless arrests can be made which would justify denying due process protection to individuals in this way.

While we appreciate that it may be necessary for the government to move faster, in conducting searches or seizures to prevent illegal exports, than is possible if a court warrant were needed, we believe that an individual officer should be required to get a "go-ahead" from his District Director (or some other supervisory official who has been designated in published regulations to act in the Director's stead). This would assure some oversight of whether there is probable cause to believe an illegal export is about to take place.

Exporters report that they find out from irate customers abroad that shipments did not arrive. This is not acceptable. We believe that enforcement officers should be statutorily required to notify exporters no later than 72 hours after detaining their goods.

- AAEI believes that your proposal, Mr. Chairman, which empowers the Secretary of Commerce to impose an import prohibition against a violator of the Act, involves a penalty of such severity that an administrative determination to impose it may not afford a high enough level of procedural protection.

More generally, we doubt that such a general ban as has been proposed could be administered without a nightmare of paperwork for importers who have violated no law.

Currently, there is no U.S. licensing system for imports in which the end user is identified. Without a precise and elaborate system like the export license procedures under the Export Administration Act, we believe the government would have to monitor all commercial operations of a company to be sure that it does not buy the prohibited goods from a non-related importer in the U.S. or import them himself. We are concerned that, lacking clear language as to which violations this penalty should cover, the proposal would permit this undue intrusion into normal business activity when _only_ a regulatory violation had occurred.

- AAEI believes that in light of proposed penalties which include loss of property or the right to engage in import and export activity, that full court review is vital to the protection of exporters' rights. No less important is court review of whether an agency has provided in its proceedings against an individual for right of adequate representation and other legal protections. We urge the Congress to provide in the Act for _de novo_ court review of agency enforcement and penalty proceedings.

- We have reviewed the provisions in the Act relating to judicial review and in our prepared testimony have suggested where we believe there are shortcomings. I should like to note here that AAEI believes that there are matters (which do not pertain to determinations of national security needs or foreign policy objectives) that are fit subjects for at least limited independent review. Such review can assure that the Act is administered consistent with basic standards of due process, as the declaration of policy in the Act directs. We would be pleased to discuss these subject areas with you or to answer any questions you may have on this or any other matters raised in our testimony.

I thank you for this opportunity to present the Association's concerns about this very important legislation.

EXECUTIVE SUMMARY OF THE AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS' TESTIMONY ON RENEWAL OF THE EXPORT ADMINISTRATION ACT

AAEI recognizes the necessity of protecting the national security. That security rests upon both military strength and a healthy domestic economy. The government can ensure both by focussing its efforts on militarily critical goods and technology, and by actively promoting U.S. exports which reduce the U.S. foreign trade deficit, increase U.S. productivity and generate new jobs.

AAEI believes that U.S. export controls can be more effective with consensus behind them, and can avoid disruption of U.S. international trade, through improved consultation with industry, Congress and our trading partners. Controls must be weighed against their domestic impact and must be characterized by certainty and due process if the program is not to unnecessarily obstruct legitimate exports or infringe upon basic rights.

To Provide Needed Critical Focus and Improve Control of Strategic Technology Transfers to Adversaries, AAEI Urges the Congress to Direct the Executive Branch to:

1) Limit controls on low technology exports; 2) Use the MCTL to pare down controls on non-strategic goods and technology; 3) Adopt a yearly review and automatic decontrol process for approved exports; 4) Strengthen COCOM and negotiate bilateral agreements with non-members; 5) Deregulate, to the maximum extent possible, exports and reexports to COCOM countries; 6) Adopt a Manufacturing Technology License and registration program (distinct from the Distribution License for product transfers) for multiproject operations between legally related companies in the Free World which pass inspection of internal controls; 7) Engage in ongoing consultation with industry on foreign availability and report quarterly to Congress on government assessment capabilities.

To Improve Industry Understanding and Compliance with the Act, AAEI Urges the Congress to:

1) Direct the government to publish a cross reference between the CCL and Schedule B, where possible, and to make the CCL accord with the Harmonized Commodity System for use when adopted; 2) Direct the government to publish regulations detailing enforcement procedures and agency responsibilities and Voluntary Disclosure Regulations.

To Ensure that the Domestic Impact of Export Controls Is Fully Weighed and that Controls Do Not Disrupt Legitimate Exports or International Relations, AAEI Urges the Congress to:

1)Mandate continued primary licensing authority for the Commerce Department, with Defense Department review; 2) Make no further restriction on Distribution or Project Licenses; 3) Prohibit unilateral foreign policy controls on goods freely available from foreign suppliers; 4) Prohibit retroactive foreign policy controls and protect prior licenses issued under national security controls then in force; 5) Prohibit extraterritorial extension of foreign policy controls; 6) Reject an automatic import ban on goods from countries which are the target of foreign policy controls; 7) Require publication of foreign policy controls in proposed form with a call for public comment; 8) Require government consultation with concerned companies, Congress, and U.S. allies (and filing of a report to Congress of determinations on each of the criteria in Sec. 6 of the Act) prior to imposition of a foreign policy control. Nullification upon failure to meet any of the foregoing requirements; 9) Mandate 6-month expiration of foreign policy controls.

To Assure Due Process in the Law and Its Administration, AAEI Urges the Congress to:

1) Require a 72-hour deadline for notification to exporters of detention of goods; 2) Prohibit warrantless arrests under the Act; 3) Require an administrative warrant prior to search or seizure of goods; 4) Reject an automatic forfeiture penalty; 5) Provide for de novo judicial review of enforcement proceedings and penalties; 6) Provide for limited court review of license denials; 7) Provide for binding I.T.C. review of Commerce Department determinations of facts on which licenses were denied; 8) Provide for court review of government failure to meet statutory obligations under the Act.

The Export Administration Act of 1979, as amended (the "Act") is due to expire this Fall. A comprehensive review and debate on the Act is now underway in the Congress. The hearings being held by this Subcommittee to get input from the private sector represent the kind of dialogue which can ensure the effectiveness of export controls and the balanced approach which Congress called for in the Act itself.

The American Association of Exporters and Importers (AAEI) is pleased to have this opportunity to share our thoughts and recommendations on the Act and its administration. This legislation is of vital concern to the members of AAEI. Well beyond our members, the Act has critical bearing on the U.S. economy and U.S. international economic and trade policy.

With 1400 U.S.-company members nationwide, AAEI is the only organization in the country specifically representing the interests of exporters and importers. In addition to exporters and importers, members include many businesses serving the trade community in the distribution of goods worldwide -- customs brokers, freight forwarders, banks, attorneys and insurance firms.

As an organization dedicated to the expansion of freer trade worldwide, AAEI believes that export controls must be imposed carefully so as not to diminish U.S. efforts at home and abroad to achieve export expansion, trade liberalization and international cooperation.

Within the Association is a working committee known as the AAEI Export Controls Group. The Group includes companies exporting broad line consumer goods, agricultural products, capital goods and high technology hardware and software, as well as service businesses. All are directly or indirectly affected by export controls policy and administration, and concerned that controls be applied and administered in a manner which takes into the fullest account possible the impact of those controls on the U.S. economy and the ability of American businesses to maintain and expand foreign markets for their products.

For nearly a year, the Group has been studying the Act and its current administration and enforcement. More recently, the Group has reviewed a number of bills which have been introduced in this Congress to provide new direction for export controls policy and administration. We believe these proposals deserve the careful and full consideration of the private sector. We will address some of these proposals and offer some recommendations on ways in which business and government might work better together to meet our country's security and economic needs.

Although there are common threads, we have divided our thoughts into five categories, as follows: The Institutional Framework for Export Controls Administration (p. 3), National Security Controls (p. 6; specific recommendations, p. 16), Foreign Policy Controls (p. 31), Enforcement of the Act (p. 51), and Procedural Safeguards and Judicial Review (p. 62).

We welcome the opportunity to discuss some of our concerns with members of the Committee at the hearing this week.

THE INSTITUTIONAL FRAMEWORK FOR EXPORT CONTROLS ADMINISTRATION

The designation of the Department of Commerce as the agency with primary responsibility for issuance of export licenses is wholly appropriate and conducive to ensuring a meaningful balance between military and domestic economic concerns. Presently, the Department of Defense, quite appropriately, has an active consultative role and exercises veto power over all licenses it chooses to review. This dual authority protects both the economic and military pillars of national security.

The present Act reflects throughout the shift of emphasis intended by Congress (since 1969) from a restrictive export policy to a more balanced approach. The Findings in Section 2 and the Declaration of Policy in Section 3 of the Act set the tone and direction for government administration of export controls. The promotion of exports to reduce the U.S. foreign trade deficit, increase U.S. productivity and generate new jobs is acknowledged as a national policy objective in the Act. Licensing decisions necessarily involve domestic economic, military, and foreign policy considerations. In the majority of licensing decisions, national security considerations are not the most critical ones.

AAEI believes that consolidating export control responsibilities in the Defense Department, as some members of Congress have proposed, does not make sense and is not necessary. Presently, in addition to the Defense Department, the National Security Council has a significant role in assuring that export control policy and licensing decisions take into full account military defense needs.

The proposal by the Chairman of this Committee to form a new agency (an Office of Strategic Trade) to administer export controls has a surface attraction. We believe that on closer examination the expectations for such a new agency may be unrealistic.

There are improvements that can and should be made in the administration of export controls to make those controls more effective on truly militarily-critical technology transfers to adversaries while ensuring that they are administered in a way that produces greater certainty for exporters and better assessment of the impact of controls on both controlled countries and on the United States. Today, we will recommend a number of ways in which we believe the present system can be improved.

We do not believe that creating a new agency to administer controls will bring about those improvements or carry out congressional intent as well as the present arrangement can. Improvements will result from a commitment of greater resources within the Deparment of Commerce to expedite the processing of export licenses, to conduct in-depth analysis of foreign availability of the products and technologies under review and to improve assessment of the economic impact of proposed controls.

Among members of the AAEI Export Controls Group are a number of individuals who have served in key government positions of responsibility respecting export promotion and control. Also participating are members who have been directly involved in various government reorganization efforts over the years. They have provided the Group with valuable insight into the kinds of change which are likely to produce positive results and the kinds that may merely involve bureaucratic rearrangement.

The experience of the recent reorganization in which the antidumping and countervailing duty responsibilities of the Treasury Department, and the Foreign Commercial Service of the State Department, were transferred to the Commerce Department, provides an example, we believe, of the disruption and delay that accompany such shifts of activity. Authorized in 1979, it was not until the Summer of 1981 that the Commerce Department was fully underway on those matters it had taken over.

A new agency would immediately face a number of liabilities which we believe would not improve the government's capability in export controls administration. We would expect, by and large, to see a shift of personnel from current positions at the Department of Commerce to a new agency. With basically the same staff, the new agency would face start-up problems, including new personnel reporting and organization procedures — problems which must be settled before the actual work can move forward. We would anticipate that the backlog of applications (which has recently been whittled down) would again rise significantly, and could bring future export business needing licenses to a near halt. The Department of Commerce has made significant headway in improving the organization of license review procedures (and in improving the working relationship with the Defense and State Departments).

We are concerned that under the glare of congressional expectation that creation of a new agency will of itself result in tighter control on critical exports to adversary countries. Any new agency would feel compelled to broaden controls to be sure it catches the critical exports, and will worry about the domestic impact of the program at some later date. Such a regression in approach would defeat efforts in Congress, and by industry, to ensure that the economic costs of export controls are fully weighed.

We would urge that rather than shifting personnel, the Congress should authorize greater funding for the Commerce Department's export controls program so that personnel, computerization and other needs can be met and the law better administered.

NATIONAL SECURITY CONTROLS

AAEI recognizes the need to establish effective export controls on goods, and, particularly, on technologies which can make a direct and significant contribution to the military capabilities of specific adversary countries. We believe that this goal can be achieved (and enhanced) through improved implementation without expanding the scope of export control authority.

We have heard much about a supposed contradiction between the objective of ensuring that the United States maintains a military lead over its adversaries and the goal of promoting U.S. exports to improve the health of the U.S. economy. We would suggest to you that these two goals are not incompatible. They are, indeed, in many ways mutually dependent for their success.

AAEI believes that national security controls must relfect an adequate apprehension of a number of domestic and international realities and a critical, and balanced, assessment of government and industry needs.

Given that government defense needs are for the most sophisticated technology available in the world today, and tomorrow, the first reality that must be acknowledged is that many technologies developed for commercial use are more advanced than technologies currently used for military purposes. Defense Department UnderSecretary for Research and Advanced Technology Dr. Edith Martin confirmed this fact at the November 1982 "GOMAC" Conference, where she reported that the United States' most advanced fighters and missiles do not have microcircuit technology as advanced as that in the ordinary digital watch or electronic games. Speaking before the House Subcommittee on International Economic Policy and Trade, last month, UnderSecretary for International Trade Lionel Olmer pointed to the same gap between commercial and military technologies.

The Department of Defense must therefore rely increasingly on technologies developed for commercial purposes. The quality of commercial technology available to the Defense Department from U.S. companies depends to a significant degree upon the ability of those companies to participate effectively in the Free World market. Such participation is essential for American companies to learn from interaction with their most advanced foreign competitors and to earn the income needed to finance research and development and capital investment in the United States.

Isolation of American companies from joint research and development projects with companies on the leading edge of new technology or failure of American companies to maintain and expand market share abroad endangers American defense efforts by ultimately compelling the U.S. to either settle for second-best technology produced at home or dependence upon foreign manufacturers for the most advanced technology.

Therefore, export control measures which put U.S. high technology companies at a competitive disadvantage vis-a-vis foreign companies in Western markets adversely affect our national security in the long run and must be avoided to the maximum extent possible.

The second reality is that American producers of high technology and the sophisticated products that are made from that technology must export to survive and today face stiff competition because they no longer monopolize the most advanced technology sectors. The Defense Department does not provide sufficient business today to make up for the loss of capital that noncompetitiveness in international markets costs American technology producers.

American companies have lost supremacy to foreign companies whose governments have designed programs and policies to enhance research and development and to expand export performance. President Reagan's recent commitment (in his State of the Union Address) to encourage, and support with an infusion of monies, improved mathematics and science education from the lower grades through college and to facilitate domestic and international joint venture research and development is certainly a good sign that the American government has begun to appreciate the need to ensure the health of this critical industry sector. However, unless U.S. export control policy is enlightened by the same sense of international realities, no amount of government support programming can keep the high technology industry competitive and up to date.

A third reality is that acquisition of sophisticated technologies takes place almost exclusively through acquisition of the technical process or know-how itself, not through transfer of products. Here, too, in his remarks before the House Foreign Affairs Subcommittee, UnderSecretary Olmer confirmed that the primary transfer of technology cannot take place by the mere transfer of products. There are a small number of highly sophisticated products which could provide a very skilled adversary with knowledge about the technology behind them. The process of analyzing these products to get at the technology, however, takes years of hard work and continuous cooperation between countries. Multilaterally-enforced export controls on these few products, and on technologies which can make a direct and significant contribution to the military capability of adversaries, can gain a measure of lead time for Western Allies and the United States. More extensive control of products can serve no critical security purpose.

The task for the U.S. government, we believe, is to refine national security controls policy and implementation in order to create the critical focus needed and to improve assessments of what is sought by and available to adversaries, while strengthening American companies' competitive position in the world market.

To succeed, AAEI believes that the government:

- Must continue to negotiate with COCOM partners to achieve more vigorous enforcement of multilaterally-authorized controls;
- Must distinguish between controls on products and on technologies and concentrate efforts on controlling critical technologies, not products made therefrom — where reverse engineering is not actually a threat;
- Must distinguish between trade with adversaries and trade with allies and other neutral countries and limit the control mechanism to the maximum extent possible to trade in critical items with adversaries;

- Must have a meaningful mechanism for removing controls on technology as specific technology becomes obsolete in terms of our national security;
- Must rely on and actively make use of industry's own internal controls mechanisms as a foundation for licensing and enforcement policy;
- Must utilize the considerable amount of high quality information that U.S. companies have about competitors' capabilities and adversaries' needs and prior acquisitions (The U.S. government's intelligence capability is at its best in the area of foreign defense establishment procurement. Industry is often in a better position to know about foreign commercial development. Where the government has Foreign Commercial Service Officers, their input can and should be sought);
- Must view foreign availability assessment as a key criterion determining the effectiveness of controls and as a positive tool to target critical technologies for control to adversary countries;
- Must improve consultation with industry to achieve a greater level of understanding, consensus and cooperative voluntary compliance.
- Should use its technology assessments to contribute to U.S. government knowledge of those areas in which encouragement of research and development is required by national security.

Addressing these needs, and formulating export controls policy which maximize their achievement can help meet the government's technology concerns. This is half of the task. The other half concerns the broader need for the government to shape controls policy with an appreciation for the vital role that a healthy economy plays in national security defense and the significant contribution of U.S. exports to the maintenance of a healthy domestic economy.

AAEI believes that no amount of government defense programming or expenditure can overcome the dangers to security created by a weak domestic economy, pervasive unemployment and low productivity in key industrial sectors.

To ensure that export controls policy does not unnecessarily damage the domestic economy the government in refining its export controls policy:

- Must make a commitment to facilitating all exports which do not make a direct and substantial contribution to an adversary's military ability;
- Must remove serious disadvantages faced by U.S. exporters in Free World markets resulting from an export controls policy which is distinctly less favorable to that trade than our trading partners' policy;
- Must make economic impact assessment a key activity when considering the imposition of new controls; and
- Must improve communication with industry so that export controls policy and administration are characterized by certainty and due process.

The need to limit controls so that the government can concentrate attention on critical technology transfers to adversary countries is not new. Congress recognized this need at the time of the last review of the Act in 1979 and specifically directed the government to do so.

Section 2(8) of the current Act states that:

> "It is important that the administration of export controls imposed for national security purposes give special emphasis to the need to

> control exports of technology (and goods which contribute significantly to the transfer of such technology) which could make a significant contribution to the military potential of any country...which would be detrimental to the national security of the United States."

Subsequent provisions relating to Militarily Critical Technologies (Section 5(d)(1)), multilateral agreement, and foreign availability (Section 5(e)(1) and (2)) reinforce that directive.

We are concerned that despite the clear direction from Congress, export controls (and validated license requirements) now cover a range of products and technology which government agencies themselves and the Congress have indicated is broader than necessary and perhaps even counterproductive to the task of concentrating on the most strategically important items. The list of controlled items includes numerous products and technical data that are either freely available from foreign sources, are insignificant in military terms, or both.

The experience of our members — wherein only a small fraction of "Free World" license applications have been ultimately denied — indicates that the government's present licensing system is much more extensive than necessary to meet its national security requirements (particularly as regards exports to Western countries), is probably not cost effective for government, adds a large burden of nonproductive cost to the business of exporting and puts American exporters at a serious disadvantage vis-a-vis foreign competitors.

Three recent studies reinforce these conclusions and point toward solutions to the problem:

Addressing the relationship between the number of commodities controlled and the government's ability to effectively control exports of critical high technology to countries deemed a risk to U.S. national security, the Senate Permanent Subcommittee on Investigations (in a recently released report) found that:

> Through improved intelligence, the government can learn more precisely what the Soviets want and need. The government could reduce the number of controlled items -- and could do a better job of preventing the Soviets from obtaining the commodities they desire most."[1]

The General Accounting Office (GAO), assessing the burden on exporters and the effectiveness of present export licensing policy and practices for national security purposes[2] found that:

> Of the 60,783 export applications that Commerce reviewed unilaterally in fiscal year 1981, almost half could have been eliminated from licensing requirements and controlled in a less burdensome way because the products involved are not considered militarily significant...Submitting these applications costs industry approximately $6.1 million a year and the Government $1 million a year in unnecessary administrative costs."

---

[1] The Committee on Governmental Affairs, U.S. Senate, The Permanent Subcommittee on Investigations, Report on Transfer of United States High Technology to the Soviet Union and Soviet Bloc Nations, November 15, 1982, p.60

[2] Report by the Comptroller General of the United States, Export Controls Regulation Could Be Reduced Without Affecting National Security, ID 82-14 (May 26, 1982).

Of more than 65,500 export license applications submitted by American business for items controlled for national security reasons in fiscal 1981, the Government carefully reviewed only 3,735 (or 5.7%) of these applications. The GAO report concludes that the licensing system "is more a paper exercise than a control mechanism."

Particularly revealing is a recently completed comparative study of export controls policy in the United States and in six COCOM and three other Western countries. The Ad Hoc Working Committee on Foreign Export Controls of the President's Export Council, at the request of the Department of Commerce, undertook an investigation of identify differences in export regulation or practice between the U.S. and other major trading nations which put U.S. exporters at a disadvantage.[3]

Through a long-standing informal arrangement, the Coordinating Committee of the Consultative Group on Export Controls/COCOM (made up of our NATO allies — except Iceland — and Japan) has developed a list of goods and technologies with strategic military value to adversary countries which participating governments control.

Despite our government's expressed strong support of COCOM, U.S. national security controls policy differs markedly from the policy of other COCOM countries. The Ad Hoc Committee's report notes that nowhere is that difference more marked than with respect to the transfer of goods and technology to other Western countries. These differences include: (1) the U.S. uses export controls to achieve foreign policy objectives. Others do not. (2) the U.S. has many exclusions to its bulk licenses. Others do not. There is a much higher use of individual licenses required in the U.S. (3) the U.S. uses national security reasons to deny licenses to Free World destinations. Others do not. (4) the U.S. controls technical data to Free World destinations. Only Japan and Germany do anything similar, and then only for truly strategic goods. (5) the time required to obtain U.S. license approval is clearly longer, even for the most favorable destinations.

---

[3] President's Export Council Export Administration Subcommittee Ad Hoc Working Group, Final Report on Foreign Export-Controls, January 1983.

The report concludes that these and other differences in treatment of West/West trade "add up to a competitive disadvantage for U.S. exports...and each acts to limit U.S. export performance below what it could otherwise be."[4] Failure to rationalize these differences significantly contributes to our domestic economic problems and aggravates an already grim unemployment picture.

Members of AAEI's Export Controls Group tell us that the differences described in this report are indeed real and are costing them business to foreign competitors who are not similarly burdened.

There is little evidence that the United States government is moving toward resolving these major discrepancies in West/West trade. In fact, we understand that there are licensing changes under consideration now which would make the gap still wider. AAEI strongly urges careful consideration of the Ad Hoc Committee's warning that such action will have an even greater negative impact on U.S. export performance.

---

[4] Ibid., p. 5

The Association makes the following recommendations regarding United States' national security controls policy and practices to address the problems of foreign availability, controls which significantly disadvantage U.S. companies without measurably improving control of technology transfers to adversary nations, and ways to enhance business compliance and participation in enforcing the controls:

1. In view of the fact that multilateral cooperation (which directly addresses the matter of foreign availability) is the only effective means to prevent transfer of militarily-significant technology to adversaries, we believe that the stronger the arrangement, the greater the level of compliance, and the more countries which participate in mutual agreements to control critical transfers, the more effective national security protective measures can be.

To achieve this:

- AAEI urges the Congress to direct the President to negotiate with our COCOM partners to improve the structure, financing, and function of COCOM, strengthen compliance and enforcement and to reach common understandings on controlled items, and
- to direct the President to seek bilateral agreements with neutral and non aligned countries outside of COCOM to restrict reexports of strategic goods and technology to proscribed countries.

2. Transfer of products and technology to COCOM and neutral countries should be deregulated to the maximum extent possible consistent with the need to prevent the reexport of militarily critical products and technology to Communist and other adversarial countries.

Specifically:

- AAEI urges that Individual Validated License requirements be lifted for the transfer to COCOM countries of products or technology (other than militarily critical technologies, keystone equipment and keystone materials) which are subject to multilateral security controls.

- Less stringent national security license requirements should be imposed for transfer of such products or technology to other non-adversary, non-COCOM member countries, provided they enter agreements with the U.S. that subject them to enforceable rules similar to those that apply to COCOM.

- National security controls for re-exports of goods and technologies subject to multilateral security controls should be lifted for exports to COCOM countries.

We believe that past experience of the U.S. government and the need to focus national security controls on preventing transfer of strategic goods and technologies to adversaries, not to allies, make this recommendation sensible from both a defense and an economic standpoint.

Under a system in which the export controls authorities of COCOM countries observe licensing requirements for exports to non-COCOM countries, U.S. validated licensing requirements for exports to COCOM countries are inappropriate and serve only to burden U.S. exporters with time delays and added cost burdens not encountered by their foreign competitors.

Having determined, as a matter of collective judgment, what strategically critical items should be controlled, COCOM provides safeguards against retransfer of militarily significant exports to adversary countries through a unanimous approval requirement for exceptions to those controls.

The added delay and expense are not justified by past experience. Over the last three years, the U.S. government has denied only six high technology export licenses to COCOM countries, and in each case the denial was made because the U.S. exporter was already prohibited from exporting.[5]

Recently, the Commerce Department and the Office of the U.S. Trade Representative proposed eliminating validated license requirements for most exports to COCOM, Australia and New Zealand, and controlling key high technology exports to those countries through bulk licenses. We believe that this proposal deserves reconsideration by Congress as it seeks to lessen the administrative burden on government (and on industry) and thereby to make the controls process more effective. We believe that such a method of control would not diminish ability of the government to control diversions of critical technology to Communist or other adversary countries.

3. We would suggest that the government can best monitor transfers of militarily critical technologies to non-adversary countries by taking advantage of the internal controls that U.S. companies must, and do, maintain to

---

[5] Comptroller General, Export Controls Regulation Could Be Reduced, p. 12.

protect proprietary know-how when transfering technology and technical data to companies abroad. Further restricting the use of the Distribution License for export of finished products seriously harms multinational (and high volume) exporters without improving control of critical technology and technical data.

To maximize effective monitoring of such technology transfers to Free World destinations:

- AAEI urges adoption of a new license category — a Manufacturing Technology License (MTL) — to be used by exporters of critical technologies and technical data to cover multinational, multiproject operations, over an open-ended time period, only among companies with defined legal relationships (subsidiaries, affiliates, joint venture partners and approved consignees) in Free World countries.

We have chosen to call this license a Manufacturing Technology License (rather than a Comprehensive Operations License -- a name that members of this Committee may be more familiar with) because we envision it as serving a more narrow purpose than the word "Comprehensive" would imply. In our view, it is definitely not intended to replace the Distribution or Project Licenses.

Use of the Manufacturing Technology License would be limited to companies dealing with critical technologies, keystone equipment and keystone materials. The license would cover long-term, well defined relationships. It would authorize to approved consignees, over an extended period, multiple exports and reexports of all items that would otherwise be subject to individual validated license requirements. The MTL would not be available for transfer to proscribed countries (e.g. Groups P, Q, W, and Y).

We would suggest a procedure similar to registration with the State Department now required under the International Traffic and Arms Regulations (ITAR). A company would register with the Commerce Department and apply for a Manufacturing Technology License. Its internal control procedures would be reviewed by the Commerce Department. If found satisfactory, an open-ended license would be approved to ship technology and technical know-how to specified legally-related foreign companies in the Free World. License holders' internal controls should be rechecked no less often than once every two years. The government could also have access to review the internal procedures of the foreign affiliates, subsidiaries, etc. to which the manufacturing technology is exported. It could satisfy itself that there is adequate prevention of leakage to non-authorized users.

Such a mechanism would permit the government to focus attention on companies which wish to ship critical manufacturing know-how to unrelated foreigners in neutral of other non-COCOM countries and on the illegal shipment of such know-how to adversary countries.

Presently, the individual validated license procedure, with which the government keeps track of transfers of critical technology to the Free World, provides the government with a fragmented view of what is being exported. We would suggest that case-by-case individual license reviews do not offer the best monitoring or enforcement tools.

The government can and should make use of the sophisticated system of internal control on technical know-how that every company utilizing advanced technology must and does maintain to stay in business.

We would suggest that resistance in some quarters to the use of bulk licenses to control product transfers to Free World destinations stems from a confusion on the part of government (compounded by industry) and from a failure to distinguish between products and the basic technology from which those products are made. The Distribution License is the most effective means for exporting -- with effective controls — finished products to most Free World destinations. The growing use of Distribution Licenses -- particularly by manufacturers of computers, integrated circuits, semiconductor production and test equipment or other so-called "keystone" equipment is naturally of concern to the Administration and the Congress. The solution is not, however, to withdraw its use by all of these manufacturers but to develop a procedure to better monitor the export to Free World destinations of critical technology and know-how, and simultaneously to utilize the monitoring mechanism that was intended to accompany the Distribution License.

The Distribution License was envisioned as providing a more effective means of U.S. enforcement through a voluntary industry agreement to make records available to inspection without specific cause or complaint. The fact that in recent years holders of a Distribution License have not been visited by a qualified representative of the Office of Export Administration to review their internal procedures is an initial problem which can be greatly alleviated with more adequate funding for OEA inspections.

Further restriction by the government of the present ability of U.S. manufacturers of high technology finished products to move those products to various Free World customers and to re-export products or parts among their foreign plants or distributors in the Free World would seriously harm their business and efforts to improve the overall U.S. foreign trade balance. Further restrictions on Distribution Licenses for product transfers would not help to prevent the diversion of militarily critical technology to adversaries because, with few exceptions, the technologies are not acquired through purchase of products but through direct transfer of know-how.

The MTL will minimize the administrative delays and burdens (on companies with significant international operations) created by an approval procedure for every transfer on a transaction-by-transaction basis for companies with significant international operations. At the same time, it will enable government officials to focus on the system of control (by initially reviewing in detail those company controls and periodically satisfying themselves that proper use of the MTL is being made) rather than on an overwhelming number of individual transactions and the need to open thousands of boxes at points of exit. Such an approach provides a strong incentive for U.S. firms to maintain their controls and permits the government to concentrate its enforcement efforts more efficiently.

4. The congressional objective of promoting United States exports, clearly expressed in the Act of 1979, has been thwarted by the imposition of blanket controls on exports of low-technology and low-technology products to the Free World where a more targetted licensing procedure would suffice.

The primary reason why only 1 out of every 17 export applications for items controlled for national security reasons undergoes close Government review is that the Defense Department is almost exclusively concerned with the export of high-technology products and technical data. Since the vast majority of low-technology products and technology do not constitute significant military risks, the Defense Department has delegated authority to the Commerce Department to approve unilaterally all such export applications. The Commerce Department routinely approves these low-technology applications (except for exports to Soviet Bloc destinations) with little or no other agency review. Despite this fact, exporters must incur the expense and delay of filing an export license application and waiting for approval.

The GAO study referred to earlier indicates that such an approach is unjustified when almost half of the applications filed for national security reasons in fiscal 1981 could have been eliminated without affecting United States national security interests.[6]

While COCOM procedures require members to report the export of low-technology products to Communist countries, licensing is not necessary to fulfill this requirement. The United States can satisfy its COCOM obligations by simply requiring exporters to report when a low-technology item has been shipped to a Communist countries and to provide documentation that the export will be used for peaceful purposes.[7] This approach to controlling low-technology exports would be less burdensome than the present licensing system and no less protective of the national security.

Licenses should be required for low-technology items only in rare cases where the Defense Department wants to review applications for export to adversary countries.

---

[6] Comptroller General, Export Controls Regulation Could Be Reduced, p. 7.

[7] Ibid.

Instead of pinpointing the rare cases where low-technology goods would be militarily significant, the present licensing system uses a "shotgun" approach to control broad categories of low-technology products.

As the Militarily Critical Technologies List (MCTL) is intended to distinguish truly militarily-critical technology from low technology, the current use of an unnecessarily broad list, lacking critical focus, is a primary matter needing attention.

- AAEI urges the Congress to explicitly direct the Executive to use the MCTL to pare down and eliminate products and technologies that are not truly critical to the defense of the United States and are available from foreign sources to adversary countries.

In 1979, Congress adopted a critical technologies approach to national security controls, shifting emphasis from controls on exports of goods to controls on the transfer of militarily critical technologies. This approach was intended to diminish uncertainty in export license decisions and to significantly reduce the controls on exports of products.

The Defense Department was specifically directed to develop an MCTL with primary emphasis on: arrays of design and manufacturing know-how; keystone manufacturing, inspection, and test equipment; and goods accompanies by sophisticated operation, application or maintainance know-how. Such technology is deemed militarily significant if its export to an adversary would permit significant advance in a military system in that country.

The MCTL formulated by the Defense Department (and still being revised) has not produced the anticipated effect of removing controls from nonstrategic items. The net effect has been an expansion, not a reduction, of controls. The uncertainty of export licensing and the unnecessary imposition of controls on products have not been relieved.

At the time of the last review of the Act, Congress urged that the Commerce Department periodically review license requirements to ensure that they are removed, as goods or technology (subject to such requirements) become obsolete with respect to the national security of the United States. Performance levels of CCL items were to be annually increased and any goods or technology no longer meeting the performance level set by the latest such increase were to be removed from the CCL.

We believe that the government should not give up on indexing as a means of refining its information about what is the newest, and/or needed, technology. We would suggest that an annual review of a year's record of license approvals, and the lifting of controls on goods or technology which the government has deemed not a threat to national security, is a practical mechanism to accomplish this. It would bring the controls process closer to the system that Congress intended it to be and the GAO found is most productive for the government and least obstructive of business.

- AAEI endorses adoption of a self-monitoring system for decontrol of low technology, such that when no license application has been denied in a year for export of a particular product or technology, all national security controls on that product or technology would be removed.

5. In an era in which the U.S. no longer has a corner on the world market for most key industrial and dual-use technology, government export licensing policy must take into strict account findings of "foreign availability".

In recognition of the negative economic impact of decisions to impose national security controls in spite of foreign availability, the Act (Sec. 5(f)), specifically directs that

> "In any case in which the Secretary determines...that any such goods or technology are available in fact to such destinations from such sources in sufficient quantity and of sufficient quality so that the requirement of a validated license...is or would be ineffective in [restricting exports "that make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States"]...the Secretary may not, after the determination is made, require a validated license for the export of such goods or technolgy... unless the President determines that the absence of export controls under this section would prove detrimental to the national security of the United States."

Sec. 5(f)(1) of the Act also calls for publication of Presidential determinations that export controls must be maintained notwithstanding foreign availability and for an estimate of the economic impact of the decision. Among companies in the AAEI Export Controls Group, very few report ever having been asked to supply economic impact data.

In view of the sacrifice that U.S. exporters and their employees are asked to make when controls are imposed, and the very real small likelihood that unilaterally-imposed controls on goods and technology that are freely available from foreign sources to adversaries can be effective, industry strongly supported these provisions when the Act was last renewed. It makes little sense to us for the government to unilaterally impose controls which do not deny adversaries goods or technologies but only serve to direct buyers' business to foreign companies, now and in the future.

To date, foreign assessment capability has not been adequately developed despite the Act's specific authorization of $1.25 million to achieve this capability.

In order to assure that thorough and accurate foreign availability and economic impact assessments are made and are given the weight that Congress intended them to have as a yardstick of the effectiveness and cost of unilateral export controls:

- AAEI strongly urges that foreign availability assessments be made on an on-going basis through consultation within government (to tap the knowledge of both domestic and foreign-based U.S. officials) and with a special Foreign Availability Industry Advisory Committee.

The present process of keeping track of foreign availability on a case-by-case basis or by periodically sending a series of questions to industry is totally inadequate. It ill serves government defense needs for accurate information about foreign competitors capabilities — including capabilities in the Soviet Bloc and China — and foreign customers' requirements in key high technology areas. Inadequate and intermittent government assessments ill serve industry's need to remain competitive with foreign producers of comparable goods and technology.

There is an urgent need to establish a Foreign Availability Industry Advisory Committee to provide regular intelligence on these matters. We applaud the recognition of this need in Senator Heinz' "Export Administration Act Amendments of 1983" (S. 397) but would urge that members of such a committee not be limited to technically-oriented industry representatives. Decisionmakers in American manufacturing companies must, and do, stay informed of their competitors' abilities and market successes, as well as market demands, in order to survive in a highly competitive international marketplace. They have valuable information to offer the government. which may be essential in light of the increasing gap between commercial technology (both U.S. and foreign) and military weapons technology.

- AAEI urges Congress to amend the Act to shift the burden of proof of non-availability to the government, where we believe it appropriately belongs.

Business assertions that particular goods and technology are indeed freely available from foreign sources must not be dismissed as the mere claim of "interested" parties. We note and strongly support Senator Heinz' recommendation that the Secretary of Commerce be directed to accept applicants' representations on foreign availability as they relate to foreign policy controls unless they are contradicted by reliable, scientific evidence. We believe that this rule of thumb is no less valid for national security controls. Where business data cannot be refuted with supportable evidence, it should be accorded due credence.

- **AAEI strongly supports a requirement that a report be prepared by the Executive Branch on a quarterly basis on the operation and improvement of the foreign availability assessment capability of the government (including training of personnel, use of computers and utilization of Foreign Commercial Service officers) and sent to this Committee and to the Foreign Affairs Committee in the House.**

We believe that quarterly reporting will provide Congress with a better picture of whether recommendations from Congress have been adopted, whether they should be refined, and what other provisions might aid the process.

Quarterly reports will also serve the Congress, in its oversight role as regards the Act, in assessing whether appropriations it has made for improvement of the foreign availability assessment function are being adequately used and whether they should be reauthorized.

The length of time over which these licensing questions will persist and the technical complexities of these matters point up the need for U.S. monitoring agencies to develop a computerized memory of prior transactions and studies. The government must develop and keep in its service a stable cadre constantly becoming more familiar with ever-changing state-of-the-art technology.

6. Compliance with national security controls is greatly enhanced when those controls are understood by industry. We believe that the government can and should take advantage of opportunities to make the present control list clearer to exporters and government officials alike. Such an opportunity exists in the form of the new Harmonized Commodity System (the H.S.) which is being developed now and will be in use in a few years.

At such time as we and our trading partners adopt the H.S., we will have one international coding system which can be used for export control purposes and negotiations with COCOM and other non-adversary countries.

The experience of our members is that they have great difficulty in locating their products on the CCL and determining whether their exports need licenses for shipment to particular countries. The practical result of this difficulty is an excessive number of unnecessary applications for licenses which swamp the review system.

Exporters are familiar with Schedule B. We appreciate that Schedule B and the CCL are designed for different purposes and that creating a single coding system (using these two systems) may pose practical problems. However, at a minimum,

- We urge the Commerce Department to prepare a cross reference between the CCL and Schedule B for those goods and technology which are on both lists. Even a small amount of help on this problem can make a big difference.

- Further, we urge the Congress to direct the Department of Commerce to begin now to make the CCL accord with the international Harmonized System nomenclature, for export control purposes.

Greater clarification and understanding of the CCL and the MCTL would not only lessen the license application burden on exporters but would, we suggest, improve compliance substantially.

FOREIGN POLICY CONTROLS

AAEI recognizes that the President must be able to fulfill export control obligations which are undertaken pursuant to international agreements to which the U.S. is a party. The Export Administration Act provides the President with authority to do this.

Such controls are multilateral in character and therefore have a good chance of being effective and enforceable. Section 6 of the Act, however, also provides broad authority to the President to unilaterally control exports to further the foreign policy of the United States.

We recognize that on rare occasion, the Administration may perceive a need to restrict exports for foreign policy purposes under the Act's authority. The members of the Export Controls Group of AAEI are alarmed and dismayed, however, by the proliferation over the last several years of unilateral export controls for foreign policy purposes.

When the Act was reauthorized in 1979, the provisions relating to foreign policy controls were separated from those relating to national security. Specific criteria were established which the President was supposed to consider when imposing new controls. A consultation process between the Executive Branch, Congress, and industry on new control policies was spelled out. At the time they were enacted, these modifications in the Act were seen as major steps toward rationalizing U.S. control policies.

Events since 1979 have demonstrated that the modifications in the Act relating to foreign policy controls were mainly hortatory, having had very little real impact on the operation of U.S. controls, and are now in need of serious strengthening.

We are particularly disturbed by the most recent trade sanctions (against the U.S.S.R. in June of last year relating to oil and gas pipeline equipment) in that the Administration appears to have confused and mixed foreign policy objectives with national security objectives. In light of our Allies' resistance to the U.S. effort to impose its foreign policy objectives on them, we are concerned that the very national security that export controls are primarily aimed at protecting may be in danger. We hope that the friction caused by the U.S. action will not impede efforts to achieve new agreements in COCOM for coordinated controls on strategic technology.

A number of goals were successively cited by the Administration after the extension of controls on the U.S.S.R. to include foreign subsidiaries of U.S. companies and foreign licensees of American-origin technology:

- a desire to effect an improvement in the situation in Poland;
- a concern that our Western European Allies might become overly dependent upon Soviet energy sources;
- an interest in seeing the level of credit terms to the Soviet Union raised well above those offered by some of our European and Japanese partners in order to make the Soviet government expend its capital reserves in the non-military sectors of its economy; and
- a related interest in preventing the Soviet Union from acquiring hard currency (through energy sales) with which to make purchases supporting military development.

We appreciate the goal of the Administration in seeking an improvement in the situation in Poland and we support continued efforts in multilateral forums to bring collective pressure on the Soviet Union to alter its position. We do not feel that unilateral export controls could achieve this goal.

More importantly, we have deep reservations about a policy of unilateral trade sanctions for the purpose of general "economic warfare". Such a policy, using controls on U.S. exports as a key weapon, will have a basic impact on American businesses, workers and communities -- an impact of such negative proportions that we believe the public and the Congress should fully debate such a policy before it is instituted.

We believe that the criteria included in Section 6(b) of the Act -- to be considered by the President before imposing, expanding, or extending foreign policy controls -- are important criteria: criteria that go to the heart of a determination that the sacrifice of business that U.S. exporters are asked to make is a meaningful one which is likely to produce the desired result and is not outweighed by the negative impact of those controls on the domestic economy or multilateral arrangements for the protection of national security.

We are concerned that these criteria (and related obligations upon the Administration to consult with Congress and industry) have not been given the weight they merit or were intended by Congress to have:

1. It is highly questionable whether U.S. unilateral export controls can positively affect the internal or foreign policies of other countries.

The experience of past sanctions for foreign policy purposes has not been one of meaningful effectiveness. It has been suggested that in some cases such sanctions may even increase resistance to our desired position. Other, behind-the-scenes, activity is historically more likely to succeed. Particularly doubtful is the effectiveness of unilaterally-imposed sanctions where alternative supplies are freely available to targetted countries.

A particularly costly example of ineffective unilateral foreign policy controls is the experience of ARMCO Steel in December 1979. After approximately four years of negotiations, ARMCO and Nippon Steel of Japan signed a $353 million contract with a Soviet company for technology capable of producing 480,000 tons of steel per year. The next week, the Soviets invaded Afghanistan. Within a short period of time, ARMCO's export licenses were suspended and the project had to be cancelled. Within the next six months, the French company Creusot Loire signed a substantially similar contract regarding the same project. It is currently performing on that contract. Clearly, the objective of that control was not achieved. The chief damage done -- serious long-term damage -- was to a U.S. company. To a lesser degree, the U.S. economy was and will continue to be damaged.

In the long run, denying access to U.S. goods and technology without agreement from other supplier countries to withhold comparable goods and technology leads the controlled country to buy those items elsewhere and to seek to develop an indigenous industry to make itself independent of all suppliers. To the extent that the latter result occurs, we suggest that the U.S. may lose some of the economic leverage that it has to encourage other countries to adopt policies that are more in line with U.S. views.

For these reasons:

- **AAEI urges that a strict foreign availability test be extended to foreign policy controls and that the loophole, (permitting the President to override a finding of availability with a determination that foreign policy requires it) be closed.**

In the absence of an emergency (for which the President can use authority under the International Emergency Economic Powers Act),* we urge closing the loophole noted above to ensure that this criterion is not lightly dismissed.

If, because of foreign availability of substitute goods or technology, a foreign policy control cannot be effective, insisting upon the control can have effect only (and very negatively) on American companies. Recent examples of U.S. unilateral foreign policy controls further indicate that insisting on ineffective or unenforceable controls can only lessen American credibility in pursuit of foreign policy objectives, give food for propaganda to our adversaries and comfort to foreign commercial competitors who win our companies' contracts.

Coupled with a strict foreign availability test, the revision of Section 6 of the Act made by Sen. Heinz' "Export Administration Act Amendments of 1983," raising the criteria in that section from the level of subjects to be considered to require a specific determination and report on each (to be filed no later than the date of imposition of a proposed control), will go a long way toward ensuring that the sacrificies asked of American exporters will indeed deny a targetted country access to a proscribed export.

* [50 U.S.C. App. Sec. 1-39 and 41-44 (1976 and Supp. IV 1980)]

2. The extraterritorial extension of U.S. foreign policy controls exacerbates frictions in our relations with our major trading partners, defeats our efforts at the GATT and in other forums to achieve freer trade internationally, endangers our efforts to gain "national treatment" for American companies operating abroad, and may threaten multilateral agreements which protect our national security.

In the case of the June 1982 expansion of export controls, for example, it is clear that our Allies opposed American efforts to extraterritorially impose U.S. foreign policy objectives on them. The European Community characterized the extension of U.S. extraterritorial jurisdiction as "an unacceptable interference in the affairs of the European Community" and a violation of international law. Great Britain and France invoked their own laws to compel companies operating within their territories to violate the U.S. regulation. The normal competition between U.S. and foreign companies escalated to the level of conflict between governments. That conflict put foreign subsidiaries and licensees of U.S. corporations in an untenable position in which they were forced to violate either their own or the host government's laws.

The Administration could have, we believe, predicted this outcome, especially in the case of France and the U.K. Whether or not the U.S. government could win its case against companies caught between conflicting claims of sovereign nations, (and we believe the legality of the extraterritorial extension of U.S. export control law is at best highly questionable), the United States cannot afford the price of victory and isolation.

The rift in the Western Alliance evidenced during the most recent sanctions called into question the very extent of Western accord on East-West relations. At this very time, the U.S. government is working with the other members of COCOM to reach agreement on a new list of militarily critical technologies. We earnestly hope that the erosion of our Allies' confidence in the United States' commitment to multilateral solutions to trade problems will not impede these negotiations.

- AAEI urges that the President be prohibited from independently extending U.S. export controls for foreign policy purposes to apply to foreign nationals (including foreign subsidiaries and licensees of U.S. companies).

In light of the serious effect of recent extraterritorial extensions of U.S. export controls law on international political relations, and the long-term damage done to American companies by such controls, we believe that any such extension must have the full backing of the Congress.

3. Foreign policy export controls have hurt American exporters much more than they have their intended targets. We find both a short term and long term negative effect of foreign policy controls (and particularly, unilaterally imposed controls) on the export performance of the U.S., on our competitive position internationally and on the international reputation of the U.S. as a reliable supplier of goods and technology. This effect extends beyond individual companies and their employees, to communities and more generally the nation as a whole.

Prior to adoption of the present language of the Act in 1979, congressional committees heard from dozens of industry representatives. What they heard most frequently was the need for U.S. export controls law and administration to be characterized by certainty and predictability. The findings expressed in Sec. 2(6) of the Act and the effort throughout the law to rationalize the controls process indicates to us that Congress took this concern to heart.

The manner in which controls have been suddenly imposed for foreign policy purposes has created an atmosphere of unpredictability which undermines U.S. companies' efforts at cooperative activities (joint investment ventures, licensing arrangements, research and development projects, etc.) with European and Japanese businesses -- activities which are vital today if American companies are to stay on the leading edge of technology and to maintain existing market share and develop new markets for their products.

Still more basically, unpredictable controls make impossible effective production planning, marketing strategy and allocation of resources for research and development. The costs and risks involved are particularly acute for smaller U.S. exporters — those very exporters who represent the segment of the business community with the greatest potential for a larger contribution both to innovation and to an improved balance of trade for the United States.

American companies no longer monopolize the kinds of products and technology that are needed for industrial development. Suppliers in Western Europe, Japan, and other countries offer buyers comparable quality and quantity in the overwhelming majority of product and technology sectors. In many cases, the U.S. is already in a tough struggle to maintain its competitive position.

Figures assessing overall impact of export controls on the domestic economy are not readily available. Nor can the full extent of the loss ever actually be discovered. However, our members tell us that they are experiencing significant losses of business to foreign competitors as a result of the U.S. foreign policy controls that have been instituted or expanded in the last year.

Those losses extend beyond the companies involved to a serious impact on workers and American communities as well. Lost business means lost jobs. Every $1 billion lost in U.S. exports means some 31,000 fewer American job opportunities. At a time of unemployment in this country at a level of more than 10% the U.S. economy can ill afford to export jobs instead of goods. (This is surely an unacceptable price when the controls cannot be effective.)

Those losses extend well beyond specific sales of goods and technology that are being negotiated at the time when controls are imposed. Reports of impact on individual companies repeatedly indicate that potential business (as well as past and current contracts) has been endangered.

In August of last year, Under Secretary for International Trade Lionel Olmer told the House Subcommittee on International Economic Policy and Foreign Affairs that the Commerce Department estimated that the U.S. "probably would lose $300-600 million in exports" because of the December 29, 1981 U.S.S.R. controls and $1.5 billion in business with the Soviet Union" as a result of the June 22, 1982 regulations. U.S. companies that fought hard to enter the

Soviet and other East Bloc markets during the days of detente will not easily recapture the business they are losing to willing European and Japanese suppliers who are not hindered by similar export controls.

The loss of market share and future penetration of markets may be the most serious long term effect of unilateral export controls for foreign policy purposes. Before the imposition of the partial grain embargo against the Soviets (after which $17 million of a total of $25 million in contracts were cancelled), the Soviets purchased 70% of their grain requirements from the United States. This year, they will purchase 17% of their requirements from the U.S. In the interim, Australia, Canada, Argentina and France have made up the difference. How does the American grain exporter regain this market share?

The fact that the United States is the only country to impose export controls extraterritorially puts American companies at a severe disadvantage vis-a-vis their competitors and raises serious doubts in the minds of potential business partners abroad about the wisdom of future agreements with U.S. companies.

4. Particularly disturbing to foreign buyers or licensees are sanctions retroactively nullifying contracts signed before such controls were imposed. The sanctity of contracts is a keystone of all business relationships and must be ensured.

The retroactive application of United States foreign policy export controls, except in times of war or a national emergency, brands American firms as unreliable suppliers in the eyes of our trading partners. Trust is essential to the development of enduring business relationships. Both parties to a transaction must have confidence that, once an agreement is reached, it will be executed in a complete and timely fashion. If the changing winds of American politics can nullify valid contracts, foreign purchasers will look to suppliers in other countries.

It is not only the exercise of the power to impose export controls retroactively that is injurious to American economic interests. The very possibility that controls will be imposed retroactively has a chilling effect on U.S. trade. Companies in countries which have already been subject to the controls will certainly seek to avoid American suppliers, but so will other foreign companies (and, indeed, foreign countries) fearing that they will be future targets.

The worldwide U.S. soybean embargo, imposed under the Short Supply section of the Act, is a good example of the damaging effect of ill-conceived retroactive sanctions. The total embargo as such was short lived. However, the subsequent cutting of all U.S. contracts in half produced a series of responses in foreign countries which American suppliers will not likely overcome. These included the imposition of restrictive import measures by major trading partners (to protect their source of supply from the uncertainties of changing American policy) and the expansion of soybean production in third countries with the help of our former customers. Disregard for the sanctity of contracts in one country encourages other countries to ignore their international commitments.

As Secretary of State Schultz pointed out when he was President of Bechtel Corporation, "In the eyes of the rest of the world, if the U.S. is willing to break a contract in one area, we will be willing to break contracts in other areas as well....government must not place private parties in the position of breaking a bargain properly arrived at."[8]

On the same day that President Reagan signed the Commodity Futures Trading Commission Reauthorzation, which contains a contract sanctity provision, he told farmers that "there must be no question about our respect for contracts. We must restore confidence in the United States' reliability as a supplier."[9]

We are gratified that American agricultural exporters have been given a measure of assurance that legal contracts will not be contravened by future controls. We see no reason why other non-military industrial sectors should not be similarly protected.

The inclusion of a "sanctity of contract" provision in the Act is the only truly effective way to restore the reputation of U.S. exporting companies as reliable suppliers and to avoid unfair financial burdens on U.S. companies and workers.

---

[8] George P. Schultz, Lightswitch Diplomacy, pp. 4, 8.

[9] Speech at the 64th Annual meeting of the American Farm Bureau Federation (January 11, 1983).

- **AAEI strongly urges adoption of an amendment to Section 6 of the Act that would prohibit the retroactive application of export controls for foreign policy purposes.**

We note that Senator Heinz has included in his amendments to the Act a contract sanctity clause that can give American industrial exporters the protection they need.

We believe, however, that there is need for clarification that new foreign policy controls will not affect licenses already granted pursuant to prior national security controls in force at that time. Prior permission to export affected goods or technology under General License procedures also should be protected from new license requirements under foreign policy controls.

We urge that a contract sanctity provision amending Section 6 of the Act spell out the protection as follows:

- **With respect to exports requiring validated licenses (including those pursuant to national security controls), once the license is issued, it cannot be revoked, suspended, or refused renewal for foreign policy reasons; and**

- **With respect to exports that fall within general licenses, new restrictions or license requirements would not affect existing contracts.**

Recent examples of the effect of foreign policy export controls on prior licenses (issued pursuant to national security controls) suggest why we believe Congress should make clear an intention to provide full protection of prior contracts: In the late 1970s, Dresser Industries was issued a validated export license to supply the USSR with machinery, equipment and technical data to construct a drill bit manufacturing facility. In response to the Soviet invasion of Afghanistan, on January 11, 1980 President Carter suspended all validated export licenses for the USSR (including the Dresser license). The Government ultimately decided to revoke Dresser's validated export license, in spite of the fact that the drill bit factory was almost completed.

The December 30, 1981 order suspending processing of all validated export licenses for the USSR in response to the declaration of Martial Law in Poland, provided further that outstanding validated export licenses may be suspended or revoked.

We do not suggest that the Government should not be able to suspend or revoke a previously issued validated export license if it subsequently determines that it has made a mistake and that the export of the commodities or technology in question would adversely affect the national security of the United States. The "sanctity of contract" principle, however, would suggest that the export of commodities or technology that have been issued a validated export license be permitted to go forward unless such a national security determination is made.

5. Without meaningful consultation with industry and Congress, we see no way that the government can meet its obligations under Section 6 or fulfill the policy directive of Section 3(2) of the Act, that full consideration be taken of the economic impact of export controls. The government has been seriously deficient in fulfilling these obligations.

We have queried our members on the extent of their involvement in consultation with government prior to the imposition or expansion of foreign policy controls during the last year. Responses indicate a strong feeling that consultation has been perfunctory at best (without adequate time for industry to provide government with specific economic impact data). In some instances, consultation amounted to a brief phone call on the day controls were due to be published. In the case of the June 22 regulations, controls were made immediately effective rather than allowing for a meaningful public comment period.

We believe that the present process (in which the Executive Branch determines who are the "appropriate" persons with whom it should consult on the economic impact of proposed controls) has tended to result in assessments which are narrowly limited to the companies whose licenses are about to be denied approval or are to be suspended or revoked. In a number of instances, we believe that the negative economic impact of controls extended well beyond those particular companies to include parts suppliers, related service industries and others.

Over the past four years, reports to Congress have tended to be conclusory and have been filed months after imposition of the controls indicating that review of the criteria in Section 6 of the Act took place ex post facto rather than as part of the initial decision-making process. Consultation with Congress prior to imposition has been cursory, without adequate time for meaningful discussion.

It is our understanding that in 1979 the Congress did not insist upon a right of veto in the belief that other modifications members made in the Act would give Congress adequate notice and participation.

In view of the broad implications of export controls for national policy (both foreign and domestic) we believe that it is imperative that Congress not only be kept informed of actions taken by the Administration, but most importantly, be a meaningful part of the decision-making process.

In order to make the consulation process (and the economic impact assessment requirement) meaningful,

- AAEI strongly urges that the Act be amended to require that the following procedures be followed with respect to the imposition of export controls for foreign policy purposes:

  (1) Prior to imposing export controls, the President must publish his intention to do so in the Federal Register. That notice must include an announcement of a public comment period.

(2) The Executive Branch must consult with Congress, hold public hearings, consider written comments and submit to the Congress a comprehensive report setting forth specific findings with respect to each of the criteria contained in Section 6 of the Act, before imposing controls. If the President fails to follow any one of these procedures, the controls cannot be imposed.

(3) If the President determines that an emergency requires immediate imposition of foreign policy export controls, he may postpone consultations, hearings and a comment period until after such imposition. He must, however, submit to Congress a preliminary report prior to the imposition of controls. That report must reflect consideration of each of the criteria in the Act and must explain why consultations and hearings could not be held before imposition of the controls. Controls imposed prior to submission of a preliminary report would be void and unenforceable.

At the latest, the Executive Branch must hold consultations and hearings and begin the comment period within 30 days of imposing the controls and the President must within 45 days from the date of imposition of the controls, submit to Congress a final report setting forth specific findings with respect to each of the criteria in the Act. Failure to submit such a final report within 45 days would result in the automatic expiration of those controls.

(4) All export controls imposed for foreign policy purposes would expire after 180 days. If the President wished to extend the controls beyond six months, he would have to initiate the procedures outlined above.

Such procedures would be self-policing. This mechanism would guarantee fulfillment of government obligations under the Act, and would do so in a much shorter period of time, and without the separation of powers problems that judicial or congressional review of completed Executive actions would involve.

6. One recommendation which has been made by Senator Heinz (and which we have heard others suggest), as regards the imposition of export controls for foreign policy purposes, is particularly disturbing to AAEI. That proposal would require that when the President imposes a foreign policy export control under the Act with respect to a country, he must simultaneously prohibit all imports from that country (except for specified goods and technology which he may permit entry).

We would suggest that this is a drastic measure which ought not to be invoked without the most careful consideration. We would question whether such an ultimate trade weapon as a country-wide import ban should be used except in the most extreme cases. We note that in appropriate circumstances, the President has authority to embargo trade under the International Economic Emergency Powers Act and the Trading with the Enemy Act.* We are not convinced that the President ought to be denied the option of imposing export controls without having to embargo imports.

* [50 U.S.C. Sec. 1701-06 (Supp. IV 1980)]

Furthermore, we must be mindful of the negative impact trade embargoes can have on both the domestic U.S. economy and on international trade relations. To elaborate on this latter point, we reject the mercantilist assumption that if you ban imports, you hurt only the target country, not our own. We would argue that that is not the case.

AAEI believes that, at the very least, this provision should be a flexible one. The President should have discretion as to whether to employ this ultimate trade weapon, especially since it must be anticipated that a U.S. import embargo will result in similar retaliatory action by the target country.

Let us look at trade with the Soviet Union for example. Although U.S.-Soviet trade has never been more than 0.5% to 1.2% of total U.S. foreign trade, that trade is important in terms of the overall U.S. balance of trade. In the last 13 years, the U.S. has realized a positive balance of trade with the Soviet Union in every year. That positive balance has reduced the overall U.S. trade deficit over those years by about 5 to 10%. Put more positively, in the years since 1914, the United States has realized an overall trade surplus of some $450 billion (in 1982 dollars). About $40 billion of that surplus resulted from U.S.-U.S.S.R. trade relations.

Beyond this benefit to the United States has been the contribution of U.S.-U.S.S.R. trade to the creation of jobs for U.S. workers. As the Soviet Union has contracted with U.S. companies for goods and industrial equipment, American companies have developed long-term market positions tying the Soviet Union to future purchases from U.S. companies. That continuing business has helped American companies to grow and attain economies of scale, and the growth has protected and created jobs for Americans.

Trade with the U.S.S.R. has also given the U.S. access to both raw materials and energy supplies which in some cases has made it possible for us to maintain alternative sources of supply. Access to new technologies developed in the Soviet Union has also been an important byproduct of our trade relations.

While obviously these benefits must be weighed against other U.S. objectives, the ability of the President to formulate policy to achieve those objectives ought not be unnecessarily restricted.

In addition, we note that this provision does not specify particular countries the imports from which could be embargoed. Suppose, for example, at some future date, a foreign policy sanction, carrying an automatic ban on imports, were used against a trading partner which is a signatory of the General Agreement on Tariffs and Trade (the GATT) or one with which the U.S. has a treaty of Friendship, Navigation and Commerce. If such an import ban went into effect, we believe this would cause the United States to violate its international trade obligations.

For all of the reasons noted above,

- AAEI urges the Congress not to adopt an amendment to the Act which would bring into play an automatic, potentially dangerous and domestically costly, import ban on foreign countries.

ENFORCEMENT OF THE ACT

In light of the dual need for the government to prevent illegal export of strategic goods and technology to adversaries, and to promote legitimate exports by U.S. companies, it is vital that enforcement activities not only be effective but that they not unnecessarily obstruct legitimate export business. Enforcement must be vigorous. At the same time, it must be characterized by the maximum possible consideration for due process and the rights of law-abiding exporters.

A number of recommendations have been made by members of Congress to improve the government's ability to enforce the country's export control laws and to better protect its national security.

We should like to think through some of these proposals with you today.

1. AAEI believes that there are many improvements that can, and should, be made in the present procedures. We believe that the current arrangement (in which the Customs Service has an active role under the direction of the Commerce Department), coupled with the suggestions we offer below, will make enforcement faster, fairer and more effective.

It has been proposed by members of this Committee to revise the present institutional organization of enforcement and penalty proceedings to give authority for such activity solely to the Customs Service. In the House, members have proposed removing the Customs Service from all but the most preliminary aspects of enforcement. We believe that effective enforcement and expeditious handling of legitimate exports would not be enhanced by either alternative.

Each agency brings an important element of experience and information to the activity. The Department of Commerce, as the primary licensing agency, brings experience with the CCL and information about the law which can aid in determining the nature and seriousness of a given violation. The Customs Service brings a long history of enforcement experience in the field. Expeditious use of information and expertise in both agencies, and better coordination between them, we would suggest, is a better solution to meet present concerns of both business and government than would be action by either agency in isolation from the other.

We would suggest that a total shift of enforcement responsibilities from either agency to the other would serve only to delay and disrupt the procedures now in place. We would suggest that the same kinds of problems that would accompany an agency shift in responsibility for license review would impede enforcement if this were done.

2. There are problems in the current practice of enforcement. We understand that some inspection of shipments may be necessary. We believe, however, that the manner in which random inspections are presently being carried out poses serious problems for legitimate exporters -- serious time

delays, cost burdens and loss of reliability in the eyes of foreign customers. There are questions of fairness and due process as well as a basic question of whether the current program is a cost effective way to do the job.

Members of the AAEI Export Controls Group tell us that their experience with the program has been one of frustration and uncertainty. Too often unjustified penalties have been paid by companies which are ultimately found to have complied with the law. Those penalties include missed sailings, letters of credit which expire before the goods arrive at their destination, and loss of future business with angry and disappointed customers.

Exporters report that they are not getting timely information when their goods are detained or seized. They report finding out from irate customers abroad that shipments did not arrive. We believe that the agency detaining goods or making a seizure should have a statutory responsibility to notify the exporter of record within 72 hours, at the latest. This is more than enough time in which to contact exporters.

Release of valid shipments can take days, weeks, even months. This is the result, apparently, of a combination of problems. Field officers often lack technical expertise and understanding of the export controls law and the regulations. Inability on the part of licensing officials in the Commerce Department to decide whether a shipment has met license requirements, or whether it may be exported, has delayed release of goods for inordinately long periods of time.

Because of the considerable impediment to legitimate export business that the present inspection, detention or seizure, and release system poses, AAEI suggests that the government must explore better procedures to achieve its enforcement goals.

AAEI believes that both government enforcement officials and industry need to have better guidance on procedures that will be followed when shipments are detained. Such guidance should specify the role that different agencies will play at each stage of the enforcement activity.

- AAEI urges the Congress to direct the Department of Commerce and the Customs Service to draw up and publish in the Federal Register a set of regulations detailing agency responsibilities and procedures, including a time limit of 72 hours for notifying exporters of detained or seized goods or technology.

We believe that to the maximum extent possible, consistent with the need to protect investigative techniques, the government can, and should, make public the general procedures that exporters can expect to encounter. Customs Service field officers should know where to get quick on-line direction from the Department of Commerce as to whether goods under inspection violate the export controls law and should be seized, or that the goods meet requirements and could be released.

We believe that it is essential that field officers be properly trained in what the export controls laws and the regulations permit or forbid:

- AAEI urges the Congress to make clear in the legislative record that Customs Service officers, as agents for the Commerce Department, must be properly trained in the law. If special funding for such training is needed, we urge the Congress to appropriate monies for for this purpose.

3. We believe that industry cooperation in complying with the Act (and actively aiding government enforcement efforts) can be improved.

We have suggested some ways in which the government can better control the majority of transfers of militarily critical technologies than is now possible. Monitoring exports at the source of the technology (through a licensing procedure and regisration system similar to that of the State Department under the ITAR) is one extremely effective tool that can enhance enforcement.

We have heard both Customs Commissioner William von Raab and Deputy Assistant Secretary Theodore Wu in the Office of Export Enforcement at the Commerce Department call for industry cooperation and voluntary compliance with the export control laws of the country. We fully agree with them that this is a vital key to effective enforcement.

Currently, there is a great deal of uncertainty when exporters come forward with information. Answers to questions that exporters have put to enforcement officials about how they will treat disclosures of possible violations prior to an investigation by the government do not instill confidence in the process or encourage business people to come forward.

AAEI believes that self-policing by business is so important to encourage that the government would do well to signal that it will provide exporters with incentives to make voluntary disclosures of possible violations. We believe that uniform regulations governing procedures and mitigation of penalties in light of cooperation would go a long way toward maximizing voluntary compliance.

Therefore,

- AAEI strongly urges the Congress to direct enforcement officials to publish voluntary disclosure regulations, including incentives for disclosure.

- We urge that those regulations be made available in proposed form for industry comment.

4. As regards proposals for expanded powers for enforcement officers in the field, AAEI urges the Congress to carefully consider such amendments to the Act to assure that they can withstand the test of constitutionality. None of us wish to see this legislation struck down in the courts.

We believe that the government can achieve its goals without excessively infringing on legitimate exporters' rights of due process.

Among the powers proposed are two in particular which we believe raise serious constitutional questions.

Providing authority to enforcement officers to make arrests without warrant or other process, we suggest, would bring the government into direct conflict with the Fifth and Fourteenth Amendments to the Constitution.

We do not believe that an imperative-need-case can be made for denying due process protection to individuals in this way. Warrantless arrest is an unnecessary extension of current authority. Detention of goods and technology serves the immediate objective of preventing illegal exports.

It has been proposed by members of this Committee that individual field officers be authorized to conduct searches or make seizures on their own motion. We believe that there are legitimate concerns of industry as well as government that must be taken into account in consideration of this matter.

We recognize that export control enforcement needs differ from those for import control. We appreciate that it may be necessary for the government to move faster than is possible if a court warrant were needed. However, even in this case, we believe that some check on this authority, short of requiring full search authority, is necessary to protect Fourth Amendment rights against unreasonable search and seizure.

An individual officer, we believe, should be required, at least, to get an administrative warrant to conduct a search or seizure. Somebody with supervisory authority -- who has an appreciation for of the overall enforcement policy and process -- should have to approve a search prior to any finding of exporter wrongdoing. This would assure some oversight of whether there is probable cause to believe an illegal export is about to take place. Where supervisory personnel are familiar with particular goods or technology and licensing requirements for their export, their information may prevent unnecessary searches or seizures. The cost to exporters of unjustified seizures is high. We believe our recommendation would provide a minimum protection against unreasonable seizures while not impeding officers in their work.

- AAEI urges the Congress to require field officers to obtain authority from the District Director for Enforcement (or from another supervisory official designated by the District Director in published regulation) prior to undertaking a search or seizure of property.

5. **Revision of the penalty provisions for violations of the Act has been proposed in a number of recent bills. We should like to look closely at two amendments in particular. One has been proposed in the House; the other, by Senator Heinz in this Committee.**

It has been suggested in the House bill that in the event of a criminal finding of violation of the law or the regulations, there should be an automatic forfeiture of property. We believe that an automatic penalty is not good policy. There should be flexibility in considering whether to apply the penalty. An affected party should have an opportunity to show why the penalty would not be appropriate in a given instance.

- AAEI urges the Congress not to adopt an automatic forfeiture penalty.

Senator Heinz has proposed (in S. 397) to authorize the Secretary of Commerce to prohibit any person found to have violated the Act from importing goods or technology into the United States.

Frankly, we think that, as it now reads, this is a bad idea and would make very bad law. It raises all kinds of administrative and legal issues. We would like to suggest some questions and problems raised by this proposal.

In reading the proposal as it is now drafted, we have tried to look at what the thinking behind it might be. It appears to us that the drafters might have had something less extensive in mind than the present formulation would entail.

We suspect the drafters had in mind to prohibit a given person or company which violates the export controls law from acquiring certain imported goods or technology. The first problem we have with the proposal as it is written is that it doesn't specify imports from a particular country or particular types of goods to be prohibited.

The proposal would appear to permit a ban on the importation into the U.S. of anything from anywhere by a violating company or individual wherever located. This raises a second problem because the present language does not distinguish between an importer of goods and a particular violator who may wish to acquire those goods (but might not himself be the importer of record).

We doubt that such a general import ban as that proposed could be reasonably administered. Presently. there is no U.S. licensing system for imports in which the end user is identified. How would the government monitor the transfer of all imports to a given company? We believe that an attempt to do so would entail a nightmare of paperwork for importers who have not violated any law.

Without a precise and elaborate system like the export license procedures under the Export Administration Act, we would suggest the government would have to monitor all commercial operations of a company to be sure that it does not buy the prohibited merchandise from a non-related importer in the U.S.

Such government intrusion into normal commercial activity, we believe, would raise serious due process problems, particularly in light of the fact that this intrusion could take place where only an administrative determination of a regulatory violation had occurred. (We understand the lack of limiting language in the proposal to mean that any violation of the Act -- whether willful or inadvertent -- or of any regulation could bring a company within range of this severe penalty.)

Further, we question whether an administrative finding of a violation and decision to impose the penalty affords a high enough level of procedural protection in view of the extremeness of the penalty.

In the last analysis, we urge the Congress to carefully consider the legal and administrative ramifications of such a severe penalty before mandating authority for its imposition. We would be pleased to work further on this matter with the Senator or Committee Staff.

PROCEDURAL SAFEGUARDS AND JUDICIAL REVIEW UNDER THE EXPORT ADMINISTRATION ACT

AAEI recognizes that there are matters pertaining to determinations of national security and foreign policy objectives and needs of the United States that properly belong in the province of the Executive Branch. Such matters, we believe, may not be appropriate subjects for judicial review within the context of the Act.

There are other matters that we would suggest are fit subjects for independent review. These include assessments of objective fact upon which decisions to impose controls are based, the application of policy determinations to specific license decisions, enforcement proceedings and penalty determinations for violations of the Act, and certain government obligations under the statute.

The AAEI Export Controls Group has given a good deal of thought to the validity of judicial review in certain circumstances and to the practical consequences of agency appeal procedures and court review.

The Act presently states in the Declaration of Policy (Section 3(1)) "that export trade by United States citizens be given a high priority and not be controlled except when such controls...are administered consistent with basic standards of due process." We believe that without some measure of independent review of agency decisions, the intent of Congress in this Declaration may not be met.

Informal agency appeal procedures have been established within the Department of Commerce (pursuant to Section 10(j)(1) for review of license denials. We suggest that those procedures, by themselves, are not sufficient to provide meaningful due process in the administration of export controls.

We urge this Committee to note in its Report to the full Congress that the Policy Declaration by itself may be insufficient direction and that specific provision for greater access to independent review of agency actions should be made.

Currently, the Act provides for judicial review of only government obligations to meet statutory licensing deadlines.

We would suggest that there are four other areas in which at least limited independent administrative or judicial review is both reasonable and necessary. These include:

1) Specific determinations of factual issues (including whether a commodity is in fact in short supply or is available to a proscribed country from foreign suppliers)

   We believe that review of such findings by an independent agency is the most practical and reasonable approach here. Specifically,

   - AAEI urges that the Congress amend the Act (and if necessary, appropriate other legislation) to accord applicants the right to request an independent study by the International Trade Commission (I.T.C.) when a government finding of non-availability of a commodity from foreign sources or of domestic short supply of a commodity is challenged by industry data. In the event the I.T.C. study demonstrates that a Commerce Department finding is not borne out by the facts, that determination should nullify a license denial based on the refuted finding.

Congress has made some provision for accountability when licenses are denied notwithstanding foreign availability (in the form of a requirement that the Executive report to the Congress on the economic impact of imposing that control). Presently, the law does not offer exporters a meaningful opportunity to challenge government findings of non-availability. Without right of independent review, we are concerned that the government will rarely concede foreign availability (and could avoid even the reporting requirement in Section 5(f)(1) of the Act).

We are not suggesting that such review should encompass matters of national security or domestic supply needs. We would not suggest that the I.T.C. be given primary authority for foreign availability or short supply determinations. However, the I.T.C. is particularly experienced in analysis of domestic and foreign commercial activity and in the collection of data on domestic supplies. It is therefore a most appropriate body to conduct studies to corroborate or refute Commerce Department findings.

2) Specific action on license applications (including determinations of the applicability of a particular CCL category to a given product or technology). This is an area in which the Executive Branch is

afforded broad discretion. For this reason, we would propose provision for judicial review within a narrower context than might otherwise be appropriate. Specifically,

- AAEI urges the Congress to provide for judicial review of such agency actions on the narrow grounds of whether those actions were arbitrary, capricious, an abuse of discretion, unreasonable, or in excess of statutory authority.

3) Enforcement and Penalty Proceedings.

- AAEI urges the Congress to amend the Act to provide for de novo court review of agency enforcement and penalty procedures.

In light of proposed penalties which include loss of property (e.g. forfeiture of goods which export has been claimed to violate the Act, and of goods used in the commission of a violation), or of the right to engage in import and export, we believe that de novo court review is vital to the protection of constitutional rights. No less important is court review of whether the agency has provided in its proceedings against an individual for right of adequate representation and other legal protections.

4) Statutory obligations on the part of the government to perform certain requirements. These requirements (under the current Act) include an obligation to analyze and issue the results of studies of the economic impact of export controls on the U.S. economy (when a national

security control is imposed or license denied notwithstanding a finding of foreign availability or when a foreign policy control is proposed) and to consult with Congress and the business community prior to imposing certain export controls.

We have suggested in our testimony on export controls for foreign policy purposes that the most direct way to deal with the problem of ensuring government performance of its obligations within specified time periods set out in the Act is to provide for automatic nullification of a control if its imposition depends upon that performance and the obligations are not met.

If this procedural safeguard is not incorporated in the Act of 1983,

- AAEI urges the Congress to authorize judicial intervention to force the Executive Branch to fulfill its statutory requirements.

These government obligations go to the heart of achieving a balanced approach to export controls policy and administration. Without timely and thorough assessments of foreign availability and domestic economic impact and without bringing the Congress and industry into the assessment process, we see no way that the government can weigh economic factors against security needs. We would reiterate here only that we believe that the economic health of the U.S. economy is one firm pillar on which our national security rests.

Senator **Heinz**. Thank you, Mr. Milosh.
Mr. Hoffman.

STATEMENT OF RICHARD S. HOFFMAN, LAW OFFICES OF GEORGE R. TUTTLE, WASHINGTON, D.C.

[Complete statement follows:]

PREPARED STATEMENT BY RICHARD S. HOFFMAN, ESQ.
OF THE LAW OFFICES OF GEORGE R. TUTTLE, P.C.,
WASHINGTON, D.C. FOR SUBMISSION BEFORE
THE SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS,
UNITED STATES SENATE
APRIL 14, 1983
WITH REGARD TO THE EXPORT ADMINISTRATION ACT OF 1983

I appreciate this opportunity to comment on an issue with respect to proposed changes to the enforcement aspects of the Export Administration Act of 1983. GEORGE R. TUTTLE Law Offices is a professional corporation based in San Francisco and specializes in the areas of imports, exports, and other international trade matters.

My comments discuss the need for the Department of Commerce to adopt some form of a voluntary disclosure procedure with respect to civil export control violations and related penalty matters. It is believed that the adoption of such procedures by legislative fiat would represent the best way to achieve this end. Further, such procedures could only enhance the enforcement of the export control program.

Voluntary Disclosure Procedures

At the present time, there is no statutory provision nor established regulatory procedures promulgated by the Department of Commerce to provide for any form of voluntary disclosure program whereby concerned exporters can come forward and volunteer information of their past violations to the Department. Great uncertainties exist as to what will happen to an exporter who discovers and discloses that he has been or is violating the law. Consultation with counsel undoubtedly will result in advice to the exporter to make a voluntary disclosure to the Department of Commerce. However, no assurances exist that the exporter will not be subjecting himself thereby to the full amount of statutory penalties. When considering that the discovery could cover numerous instances of prior violations of the export regulations, it is evident that the exporter's liability under the statutory penalties could be very large. The possibility of such large penalties can have a serious and deleterious effect on the financial operations of an exporter as well as the value of its corporate shares. Under these circumstances, a decision to cooperate in a timely manner is not one which can be readily made.

It should be recognized also that benefits to the Government are readily apparent by reason of its being voluntarily informed of the actual or potential infractions by the exporter. By receiving information of what has happened, the Government will certainly be in a position, if necessary, to bring the problem to the attention of the other members of the exporting community who might be in a similar position. It would also make the Government aware early on of any potential damage to the export control program. Further, the receipt of information by voluntary disclosure would conserve investigative resources which may then be dedicated to more serious and undetected violations. Thus, it is thought to be to both the exporter's and the Government's advantage to encourage voluntary disclosure. The absence of statutory and regulatory fiat, by the same token, certainly fails to encourage a voluntary cooperation with the Government and creates a reluctance on the part of exporters to make disclosures to the Department of Commerce for fear of incurring severe penalties.

We believe that such a program will work, based on the experience of the United States Customs Service with regard to its voluntary disclosure program. For a number of years, the Customs Service has had in effect a voluntary disclosure program which has resulted in numerous disclosures by importers who have volunteered their past violations to Customs. Further, this program has fostered cooperation among the importing community and has served as a tool for the Customs Service to impress upon importers their obligations under the Customs Laws. This program has in general been highly successful and has been valuable to the Customs Service in implementing its enforcement program. Under the Customs procedures, an importer files a voluntary disclosure letter with the appropriate District Director of Customs who has jurisdiction over the entry of the imported merchandise. Customs reviews the submission to determine if it is in fact voluntary. If it is determined to be voluntary, the importer will be given substantially reduced penalties. This is provided for in the applicable Customs statute as well as in implementing Customs regulations.

We understand that it is the policy of the Department of Commerce to grant reduced penalties where an exporter comes forward with a voluntary disclosure of past or present violations or infractions. This policy is that the disclosure in itself will not entitle an exporter to any specific mitigation. Rather, a voluntary disclosure is merely one of the many factors which serve to mitigate a penalty. I believe all will agree that a voluntary disclosure by an exporter represents a mitigating factor when considering civil liabilities. However, the absence of statutory fiat and written procedures creates uncertainty and a reluctance on the part of exporters to make disclosures to the Department of Commerce for fear of incurring the severe statutory penalties. A statutorily determined voluntary disclosure procedure certainly would encourage exporters to come forth to volunteer actual or potential violations with the prior knowledge that they will not be penalized more than the limited, specified maximum amount. Thus, we feel that a voluntary disclosure policy should be incorporated in the new Export Administration Act.

Mr. Chairman, I thank you for this opportunity to appear before this subcommittee to discuss these matters. If there are any questions, I will be very pleased to attempt to answer them.

Senator HEINZ. Mr. Hoffman, thank you.

Mr. Milosh, I'm going to—again because of time constraints—submit some questions to both of you in writing. We thank you for your testimony.

Mr. Milosh, you have certainly done quite a thorough job of researching the many issues. I was very pleased to see you come forward with so many specifics regarding the enforcement question which is one that we will probably continue to debate for many decades to come. We welcome your help in moving the debate forward and hopefully we will be able to improve the system we've got.

We thank you both very much.

[Whereupon, at 12:45 p.m., the hearing was adjourned.]

[Additional material supplied for the record follows:]

PREPARED STATEMENT OF
THE AMERICAN MARITIME ASSOCIATION
BEFORE THE SUBCOMMITTEE ON
INTERNATIONAL FINANCE AND MONETARY POLICY
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
U.S. SENATE

April 14, 1983

Mr. Chairman, the members of the American Maritime Association very much appreciate your providing us with the opportunity to express our views as your Subcommittee considers revisions to and reauthorization of the Export Administration Act of 1979.

At the outset, we wish to emphasize our support for your decision, as expressed in section 12 of your bill S. 397, to continue in effect the existing restrictions on the export of Alaskan crude oil included in section 7(d) of the Export Administration Act of 1979. We believe that preservation of the status quo will protect and promote the national interest.

As we have done in the past, we will continue to support the efforts of the Congress to limit Executive discretion in authorizing exports of Alaskan crude oil. Quite clearly, any change in the present policy would have severe, adverse ramifications on the maritime industry, our government's energy policy, our national security, our international trade relations, consumers' pocketbooks, and workers' paychecks.

The adverse effects of Alaskan crude oil exports would weigh most heavily on the U.S. merchant marine, in particular on independent shipping companies (as opposed to the crude oil producing companies, which also operate their own tanker vessels). We are deeply concerned that independent shipping companies could suffer revenue losses so great as to threaten the financial viability of many shipholding groups. We cannot understand why the Administration would seek to transfer business to foreign flag vessel operators at the expense of the domestic maritime industry.

The extent and the severity of the harm the maritime industry will suffer will depend in great measure on the volume of Alaskan crude oil exports and the velocity at which these exports increase. Obviously, the greater the volume and velocity, the more severe the harm.

Based on a private study that is being prepared for us by Robert R. Nathan Associates, Inc., we believe that in the most likely scenario 300,000 b/d of Alaskan crude oil annually would be exported within five years were the present restrictions lifted. Every 100,000 b/d of exports translates into 700,000 dead-weight tons (dwt) of tanker size capacity. Based on an export scenario of 300,000 b/d, more than a third of the approximately 70 tankers at present in the Alaskan crude oil trade would be displaced. Exports also would depress shipping rates for vessels still able to find business in the trade. Further losses would result from the spreading effect of declining rates on independent tankers in the domestic, non-Alaskan trade. We foresee revenue losses exceeding $325 million a year to the domestic maritime industry. As noted earlier, these losses will be borne primarily by the independent companies (since the oil companies have the ability and incentive to keep their own tanker vessels operating).

Decisions of this sort should not be made without careful reference to defense implications. Any reduction in the nation's tanker fleet would have a dangerous impact on our national security. Mr. Paul Thayer, the Deputy Secretary of Defense, in a letter dated March 28, 1983 (a copy of which is attached) has indicated that implementation of the Transportation Department's Construction Differential Subsidy (CDS) Replacement proposal would have "the detrimental effect of accelerated small tanker retirements on our ability to resupply overseas forces in the event of war." He further indicated in that letter his concern that no actions be taken that would "greatly exacerbate an already dangerous trend toward small tanker extinction." The effect of the CDS Replacement proposal would be to vastly increase the supply of tankers, forcing the militarily important small tankers out of business. The export of Alaskan crude oil, by decreasing demand for vessels, would have precisely the same effect.

The financial losses of crude oil carriers would be felt by workers within the maritime industry and in other sectors of the economy as well. The number of domestic maritime jobs lost would depend upon the number and the size composition of the vessels idled due to Alaskan crude oil exports. Based on an export level of 300,000 b/d and the estimated idling of 25 vessels, we expect that approximately 1,700 maritime workers would lose their jobs. Approximately 6,000 to 7,000 workers engaged in the supply of intermediate goods and services to the shipping industry probably would lose their jobs as well. Alaskan crude oil exports would not create additional jobs or employment opportunities for these displaced workers.

In addition to independent shipholding groups and maritime and related employees, the federal government also would suffer financially by Alaskan crude oil exports. Loan guarantee defaults and increased unemployment claims, and reduced income tax payments would affect the Treasury. The speculative gains from exports are unlikely to offset these losses.

The federal government at present has outstanding $1.5 billion in Title XI loan guarantees for petroleum tankers. We estimate that approximately one-half of those loan guarantees would be at risk were Alaskan crude oil exports permitted. We can only make rough estimates at this point because the proportion of Title XI loan guarantees at risk would depend upon the decisions of the affected shipping companies. Few could afford to continue carrying heavy mortgages on idle ships, particularly with there being little likelihood that these ships ever could again be used productively. Unfortunately, many vessels were constructed over the past decade for use solely in the Alaskan crude oil trade and no practicable alternatives exist for these ships in either the domestic or international market under current conditions. Indeed, one million tons of older tonnage already has been laid up for want of business. Thus, we believe that it is reasonable to assume that the federal government might be forced to meet approximately $750 million in loan obligations.

The idling of vessels also would have a deleterious effect on the gross national product by decreased maritime activity, and in sectors of the economy that provide intermediate goods and services for the maritime industry. For example, ship repair and building yards and their suppliers especially in the Northwest would feel the effect of Alaskan crude oil exports as shipping activity declined.

Notwithstanding the deleterious financial costs involved, the Reagan Administration nonetheless has proposed eliminating the present restrictions on the export of Alaskan crude oil embodied in section 7(d) of the Export Administration Act of 1979. Although the Administration has been careful to argue that other statutes place restrictions on the President's authority to permit such exports, the Members of this Subcommittee are well aware that those statutory provisions contain significantly lower threshold tests that must be met before the President can authorize Alaskan crude oil exports. Moreover, the strength of those provisions is predicated on the continued existence of the present restrictions in section 7(d). In effect, if the present restrictions in the Export Administration Act of 1979 are lifted, a relatively free hand will be granted for permitting such exports.

By seeking to alter the status quo, the Administration is directly challenging the long-standing efforts of Congress to protect and promote our national interest. The Members of this Subcommittee recognize the damage the Administration's proposal would inflict. We trust that the Congress, as it has wisely done on repeated occasions during the past decade, will once again exercise its constitutional prerogative to protect and promote the national interest by maintaining reasonable restrictions on the export of Alaskan crude oil.

Again, Mr. Chairman, the members of the American Maritime Association appreciate this opportunity to come before your Subcommittee and hope that you will call upon us if we can be of further assistance to your Subcommittee.

The Honorable Elizabeth Hanford Dole
The Secretary of Transportation
400 7th Street, S. W.
Washington, D. C. 20590

Dear Elizabeth:

The purpose of this letter is to request that the Department of Transportation not enact the Construction Differential Subsidy (CDS) Replacement proposal contained in your Notice of Proposed Rulemaking (NPRM), Federal Register (Volume 48, No. 21, p. 4408, of 31 January 1983).

Currently, CDS built tankers, as authorized by MARAD can participate in Jones Act Trade only to a maximum of six months annually. It is my understanding the proposed rule would lift all restrictions on Jones Act trading by CDS tankers whose subsidies had been reimbursed. The effect of this rule change would be threefold: (1) smaller, militarily useful tankers would be squeezed out of the domestic trade market by large tankers supported by the proposed rules; (2) our depressed shipbuilding industry, which has looked forward to the business created by the Port and Tanker Safety Act of 1978, would be deprived of the anticipated work it so badly needs; and (3) a windfall profit would be provided to a few major companies with CDS built tankers under charter.

The Navy's specific concern is the detrimental effect of accelerated small tanker retirements on our ability to resupply overseas forces in the event of war. Nearly half of our wartime shipping requirements, in terms of tonnage to be shipped, must be carried in tankers between 6 and 60 thousand DWT, with coated tanks to permit carriage of refined product. Larger tankers, the type supported by the proposed rules, are of limited value for military deployment and support purposes. As a result of the changes in petroleum product distribution systems, including shorter routes, greater use of pipelines, and other inland surface modes, the commercial requirement for smaller domestic oceangoing tankers has been steadily reduced. Application of the technical provisions of the Port and Tanker Safety Act will further accelerate the retirements of these tankers.

I fear that the proposed ruling to allow large tankers a greater share of domestic trade will greatly exacerbate an already dangerous trend toward small tanker extinction. I have asked the Assistant Secretary of the Navy, Shipbuilding and Logistics to provide a more detailed explanation of our concerns.

Your assistance in this matter is greatly appreciated.

Sincerely,

Paul Thayer

Paul Thayer

LINKING TRADE TO POLITICAL GOALS: FOREIGN POLICY EXPORT CONTROLS IN THE 1970s AND 1980s

KENNETH W. ABBOTT

Reprinted from
MINNESOTA LAW REVIEW
Vol. 65, No. 5, June 1981
© 1981 by the Minnesota Law Review Foundation

Linking Trade to Political Goals: Foreign Policy Export Controls in the 1970s and 1980s

Kenneth W. Abbott[*]

> *"Perhaps it's some reflection of my early upbringing, but I could never . . . hear the word 'linkage' without thinking of the word 'bologna'."*[**]

TABLE OF CONTENTS

I. INTRODUCTION 741
II. THE EXPORT CONTROL SYSTEM 745
  A. POLICIES 746
  B. ADMINISTRATION 748
  C. LICENSING.. 750
    1. *Types of Licenses* 750
    2. *Country Groups* 752
    3. *Commodities* 754
    4. *Information* 755
III. THE GROWTH OF FOREIGN POLICY EXPORT CONTROLS.. 756
  A. THE EXPANDING MEANING OF FOREIGN POLICY UNDER THE EXPORT ADMINISTRATION ACT OF 1969.. 756
    1. *The Traditional Role of Foreign Policy* 756

---

[*] © Kenneth W. Abbott, 1980. Associate Professor, Northwestern University School of Law. I would like to thank Professor Harold J. Berman of Harvard Law School and Professor Robert E. Hudec of the University of Minnesota Law School for helpful comments on this manuscript, and Martin Diestler and Stephanie Hoffman of the Northwestern University School of Law, Class of 1981, for valuable research assistance. Like many others, I owe a particular debt to Professor Berman, not only for his writings on the law of international trade (including his leading article on export controls, cited in note 2 *infra*), but also for his generous personal support. Any errors herein are of course my own.

[**] George Ball, in testimony before the Senate Banking Committee, *Use of Export Controls and Export Credits for Foreign Policy Purposes: Hearings Before the Senate Comm. on Banking, Housing and Urban Affairs*, 95th Cong., 2d Sess. 17 (1978).

- 2. *The Access to Supplies Policy* 763
- 3. *The Anti-Terrorism Policy* 766
- 4. *The Human Rights Policy* 772

B. FOREIGN POLICY EXPORT CONTROLS, 1977-1978 777
- 1. *Uganda: A Foreign Policy Embargo* 778
- 2. *The South African Military and Police: An Embargo of Disfavored Institutions* 782
- 3. *Crime Detection Equipment: Controls on the Instruments of Disfavored Conduct* 787
- 4. *Petroleum Equipment Exports to the Soviet Union: A Signal of National Displeasure* 790
- 5. *The TASS Computer: The Uses of Licensing Policy* 794

IV. THE THEORY OF FOREIGN POLICY EXPORT CONTROLS... 798

A. THE INSTRUMENTAL RATIONALE 799
- 1. *The Instrumental View of Trade Controls* 799
- 2. *Economic Effectiveness of Controls* 800
- 3. *The Likelihood of Instrumental Success* 812
- 4. *Quasi-Instrumental Motivations* 819
- 5. *Summary* 821

B. THE SYMBOLIC RATIONALE 822

C. THE COSTS OF POLITICAL EXPORT CONTROLS 826
- 1. *Economic Costs* 826
- 2. *Political Costs* 838
- 3. *Systemic Costs* 849

V. THE EXPORT ADMINISTRATION ACT OF 1979 857

A. SEPARATION OF NATIONAL SECURITY AND FOREIGN POLICY CONTROLS 858

B. STATUTORY TONE 860

C. SUBSTANTIVE PROVISIONS 862
- 1. *Foreign Availability* 862
- 2. *Decision Factors* 865
- 3. *Exhaustion of Other Means* 868
- 4. *Consultation and Reports* 869
- 5. *Automatic Expiration* 871
- 6. *Miscellaneous Provisions* 872

VI. APPROACHES TO REFORM 873

A. TIGHTER STATUTORY RESTRAINTS................... 877

B. PARTICIPATION BY CONGRESS....................... 880

C. REPEAL OF DELEGATED AUTHORITY 882

I. INTRODUCTION

During the late 1970s, particularly during the early years of the Carter Administration, the executive branch imposed an unprecedented variety of restrictions on private commercial exports[1] in efforts to further particular goals of United States foreign policy. This linkage of American trade to political ends abroad strikingly altered the nature of American export controls: the number of controls imposed for foreign policy purposes increased markedly; the range of products and countries subject to restriction was significantly expanded; and most important of all, new, still poorly defined foreign policy objectives were asserted as the basis for curtailing exports.

The principal source of executive power[2] during this period was the Export Administration Act of 1969 (EAA '69),[3] which

---

[1] This Article focuses on governmental controls regulating the export of normal industrial products and agricultural commodities by private firms. It considers only tangentially controls on the export of military arms, equipment, and services (administered by the Departments of State and Defense under the Arms Export Control Act of 1978, 22 U.S.C. §§ 2751-2794 (1976 & Supp. III 1979)), nuclear material (administered by the Departments of State and Energy and the Nuclear Regulatory Commission under the Atomic Energy Act of 1954, 42 U.S.C. §§ 2011-2296 (1976), *as amended by* Nuclear Non-Proliferation Act of 1978, Pub. L. No. 95-242, 92 Stat. 120, 42 U.S.C. § 2155 (Supp. III 1979)), and other products subject to specialized control regimes.

Nor does this Article examine the many other forms of political control on international trade: import controls, blockades and other devices to enforce trade restrictions, freezing or vesting of assets, restrictions on governmental export credits or other forms of public support for international economic transactions, interruption of private payments, discrimination in tariff treatment, and the like. *See* M. McDougal & P. Feliciano, Law and Minimum World Public Order 30-32, 325-28 (1961). Although political trade controls may be employed singly or in combination, unilaterally or multilaterally, and for a multitude of ends, this Article focuses on unilateral export controls used to further national foreign policy goals. Even in the context of total or partial trade embargoes, the export control element is singled out. Such a focus is in some ways overly restrictive, but it is justified by the following considerations:

(1) The United States, particularly during the 1970s, has often imposed unilateral foreign policy export controls not in combination with other trade controls;
(2) the particular considerations relevant to the appropriateness of export controls must be examined separately, even when export controls are used in conjunction with other forms of trade control; and
(3) most American export controls are imposed under a statute that does not authorize other forms of controls—a statute that was amended in 1979 with a particular view to reforming its treatment of foreign policy export controls.

Of course, many of the observations made here as to export controls are equally applicable, either directly or by analogy, to other types of political trade control.

[2] Controls on ordinary commercial exports were also in force during the 1970s under two other pieces of legislation: the United Nations Participation

---

Act of 1945, § 5, 22 U.S.C. § 287c (1976), and the Trading with the Enemy Act of 1917 (TWEA), § 5(b), 50 U.S.C. app. § 5(b) (1976 & Supp. III 1979).

Section 5 of the United Nations Participation Act of 1945, 22 U.S.C. § 287c (1976), empowers the President to act "to the extent necessary" to apply economic sanctions mandated by the United Nations Security Council under Article 41 of the United Nations Charter. *See* U.N. CHARTER art. 41.

The Security Council may call for economic sanctions pursuant to Article 41 after first determining that a threat to the peace exists or that a breach of the peace or an act of aggression has occurred. *See id.* at arts. 39, 41. Member nations are obligated under the Charter to impose sanctions so approved. Nonmandatory sanctions may also be called for by the Security Council and the General Assembly. *See id.* at art. 10. The Security Council has been able to use Article 41 sanctions only sparingly; its failure to invoke the sanctions against Iran that the United States had requested following the seizure of the American Embassy in Teheran illustrates the limits of the procedure. *See* Nossiter, *Moscow Vetoes Plan to Impose Penalty on Iran*, N.Y. Times, Jan. 14, 1980, at 1, col. 5. If mandatory sanctions are imposed by the Council, the President may under the Act "investigate, regulate or prohibit, in whole or part, economic relations or [any] means of communication" between the United States and any foreign country, its nationals, or other persons in its territory. 22 U.S.C. § 287c(a) (1976).

Two economic sanctions imposed under Article 41 will be referred to herein. The first and most extensive use of Article 41 was against Rhodesia. (For convenience, the name "Rhodesia" will be used throughout, although when sanctions were imposed, the colonial name "Southern Rhodesia" was generally used; following the internal settlement of 1978, "Zimbabwe-Rhodesia" was temporarily adopted; in late 1979, the nation briefly resumed colonial status and was again called "Southern Rhodesia"; and since full independence, the nation is called "Zimbabwe.") Voluntary sanctions were called for in 1965. 20 U.N. SCOR 8-9, U.N. Doc. S/RES/217 (1965). Mandatory sanctions were imposed in 1966. S.C. Res. 217, 21 U.N. SCOR, Resolutions and Decisions of the Security Council, U.N. Doc. S/RES/232, S/INF/20 Rev. 1 (1966). Ultimately, a total embargo was imposed; the policy of the Commerce Department was to prohibit all exports but for humanitarian items. Sanctions were terminated by the United States in December 1979, Exec. Order No. 12,183, 44 Fed. Reg. 74,787 (1979), *reprinted in* 22 U.S.C. § 287c app., at 478 (Supp. III 1979), and by the Security Council soon afterward. N.Y. Times, Dec. 27, 1979, at 8, col. 4. The second sanction discussed was imposed in 1977 when the Security Council called for an embargo on shipments of arms, munitions, military equipment, and material for their manufacture and maintenance to South Africa. S.C. Res. 418, 32 U.N. SCOR 1, Resolutions and Decisions of the Security Council 1977 at 5, U.N. Doc. S/RES/418, S/INF/33 (1977). This sanction followed a call for a voluntary arms embargo in 1963, S.C. Res. 181, 18 U.N. SCOR, Resolutions and Decisions of the Security Council 1963 at 7, U.N. Doc. S/RES/181, S/INF/18/Rev. 1 (1963), with which the United States had complied. 15 C.F.R. § 385.4(a)(1) (1980).

Section 5(b) of the TWEA, 50 U.S.C. app. § 5(b) (1976 & Supp. III 1979), grants extraordinary powers to the President to control trade, payments, and other economic transactions. Originally applicable only in wartime, the Act was amended in 1933 to make these powers available to the President whenever he declared a national emergency. Act of Mar. 9, 1933, ch. 1, § 2, 48 Stat. 1. Four national emergencies—one declared in 1933, another in 1950—remained in effect as of 1976. *See* SENATE SPECIAL COMM. ON NATIONAL EMERGENCIES AND DELEGATED EMERGENCY POWERS, NATIONAL EMERGENCIES AND DELEGATED EMERGENCY POWERS, S. REP. No. 94-922, 94th Cong., 2d Sess. 3 (1976).

Three sets of political trade controls imposed under the TWEA during the long period of official national emergency also were in effect in 1976. (1) The delegated to the President the authority to prohibit or curtail exports for the purposes set forth in the Act.[4] The furtherance of United States foreign policy had always been one of the purposes specified by EAA '69,[5] but by the late 1970s Congress and the President had given the term "foreign policy" new content

---

Foreign Assets Control Regulations (FACR), 31 C.F.R. §§ 500.101-500.809 (1980), first adopted during the Korean conflict, impose an almost total embargo on North Korea, Vietnam, and Cambodia. The People's Republic of China was embargoed under the FACR from 1950 to 1971. *See* 36 Fed. Reg. 8,584, 11,441 (1971). (2) The Cuban Assets Control Regulations, 31 C.F.R. §§ 515.101-515.809 (1980), impose a less complete embargo on trade and financial transactions with Cuba. (3) The Transaction Control Regulations, *id.* at §§ 505.101-505.60, prohibit trade and payment transactions involving strategic materials, arms, or nuclear material between any United States person (including any controlled foreign corporation) acting abroad and the Soviet Union, other Communist nations (excluding Yugoslavia and Cuba), and the nations embargoed under the FACR.

Under all three sets of controls, regulated transactions can be licensed by the Treasury Department, *id.* at §§ 500.201, .204, 505.30, 515.333, but all three rely upon the Commerce Department to license exports from the United States. *Id.* at §§ 500.533, 505.30, 515.533. Treasury's involvement, then, is usually limited to non-United States origin exports by controlled foreign subsidiaries. *See generally* Berman & Garson, *United States Export Controls—Past, Present, and Future*, 67 COLUM. L. REV. 791, 808-09 (1967).

The National Emergencies Act of 1976, Pub. L. No. 94-412, §§ 101-501, 90 Stat. 1255 (codified at 50 U.S.C. §§ 1601-1651 (1976 & Supp. III 1979)), terminated all powers held by the President as a result of any prior declaration of national emergency, 50 U.S.C. § 1601 (1976), and prescribed conditions for future declarations and actions thereunder. *Id.* at §§ 1621-1641. The TWEA was excepted from this termination provision, *id.* at § 1651, but in 1977 was amended to limit its applicability to periods of declared war. *See* Act of Dec. 28, 1977, Pub. L. No. 95-223, tit. I, 91 Stat. 1625. The existing regulations under the Act could continue in effect until September 1978, and thereafter if extended by the President in the national interest for successive one-year periods. Act of Dec. 28, 1977, Pub. L. No. 95-223, § 101(a)-(c), 91 Stat. 1625. The regulations have been extended three times. Memorandum of Sept. 8, 1978, 3 C.F.R. 309 (1979); Memorandum of Sept. 12, 1979, 3 C.F.R. 490 (1980); Memorandum of Sept. 8, 1980, 45 Fed. Reg. 59,549 (1980).

When Congress amended the TWEA in 1977, it simultaneously enacted the International Emergency Economic Powers Act (IEEPA), Pub. L. No. 95-223, §§ 201-208, tit. II, 91 Stat. 1626 (1977) (codified at 50 U.S.C. app. §§ 1701-1706 (Supp. III 1979)). The IEEPA delegates to the President powers similar to those contained in TWEA to be used during declared national emergencies short of declared war, but imposes certain restraints on their exercise. The restraints of the National Emergencies Act also continue to apply to declarations under IEEPA. 50 U.S.C. §§ 1621(b), 1701-1703 (Supp. III 1979).

[3] Pub. L. No. 91-184, 83 Stat. 841, *as amended by* Act of Dec. 28, 1977, Pub. L. No. 95-223, tit. III, 91 Stat. 1625; Export Administration Amendments of 1977, Pub. L. No. 95-52, 91 Stat. 235; Export Administration Amendments of 1974, Pub. L. No. 93-500, 88 Stat. 1552; Equal Export Opportunity Act, Pub. L. No. 92-412, 86 Stat. 644 (1972) (expired 1979). EAA '69 was in effect from the end of 1969 until September 30, 1979. It replaced the Export Control Act of 1949, ch. 11, 63 Stat. 7 (expired 1969).

[4] EAA '69, Pub. L. No. 91-184, § 4(b), 83 Stat. 841 (codified at 50 U.S.C. app. § 2403(b)(1) (1976)) (expired 1979).

[5] *See id.* at § 3(2)(b), 50 U.S.C. app. § 2402(2)(B).

and scope. In 1974 and 1977, two provisions incorporating recently established foreign policy goals were added to the Act: the first approved the use of export controls to combat restrictions imposed by other nations on access to raw materials and other supplies;[6] the second authorized the use of controls to discourage other nations from assisting international terrorists.[7] Another major objective of American foreign policy, though never reflected in an amendment to the Act, began to emerge at the same time—the promotion of respect abroad for internationally recognized human rights.[8] The pursuit of these goals in the late 1970s changed the character of American export controls.

Ironically, the growth of political export controls occurred while Congress and the executive branch were vigorously seeking to encourage American exports to cope with a large, persistent United States trade deficit. That growth also coincided with the onset of a widespread realization that the United States could no longer, by curtailing its exports, unilaterally prevent foreign nations from obtaining most sophisticated products and technologies.[9]

Such ironies led many to question the growing American reliance on foreign policy export controls. As the expiration date of EAA '69 approached, new legislation was introduced and extensive congressional hearings were held.[10] This activity culminated in the Export Administration Act of 1979 (EAA '79),[11] which attempts to restrict presidential authority to institute political export controls. As the 1980s began, however, foreign policy controls continued to flourish despite the restraints imposed by the complex provisions of EAA '79.

---

[6] Export Administration Amendments of 1974, Pub. L. No. 93-500, § 11, 88 Stat. 1552 (expired 1979). *See* text accompanying notes 123-40 *infra*.

[7] Act of Dec. 28, 1977, Pub. L. No. 95-223, § 301(a), 91 Stat. 1625 (expired 1979). *See* text accompanying notes 141-69 *infra*.

[8] *See* text accompanying notes 170-200 *infra*.

[9] *See* text accompanying notes 356-414 *infra*.

[10] The principal bills were introduced by Senator Adlai Stevenson III in the Senate (S. 737, 96th Cong., 1st Sess. (1979)), by Representative Jonathan Bingham in the House (H.R. 2539, 96th Cong., 1st Sess. (1979)), and by the Carter Administration (S. 977, H.R. 3652, 96th Cong., 1st Sess. (1979)). Other bills introduced in the House during the first session of the 96th Congress included H.R. 2344 and H.R. 3301 (Rep. McKinney), H.R. 3154 (Rep. Gibbons), and H.R. 3216 (Rep. Wolff). The House adopted H.R. 4034, a bill incorporating changes made in committee; the Senate adopted S. 737; and a conference committee resolved the differences between the House and Senate proposals. *See generally* H.R. Conf. Rep. No. 96-482, 96th Cong. [hereinafter cited as H.R. Conf. Rep. No. 96-482], 1st Sess., *reprinted in* [1979] U.S. Code Cong. & Ad. News 1180.

[11] Pub. L. No. 96-72, 93 Stat. 503 (codified at 50 U.S.C. app. §§ 2401-2420 (Supp. III 1979)). *See generally* Note, *Reconciliation of Conflicting Goals in the Export Administration Act of 1979—A Delicate Balance*, 12 L. & Pol'y Int'l Bus. 415 (1980).

Part II of this Article describes the United States export control system as it operated under EAA '69[12] and, in most respects, as it operates today. Part III reviews the growth of the new policies pursued by means of export controls during the 1970s and briefly describes several important controls imposed in 1977 and 1978 that are used as examples in the remainder of the Article. Part IV critically analyzes the rationales for the use of export controls to further foreign policy and suggests that controls are appropriate in relatively few situations. Part V considers the foreign policy provisions of EAA '79 in light of this analysis. Part VI concludes the Article with recommendations for further limiting the use of foreign policy export controls.

II. THE EXPORT CONTROL SYSTEM

EAA '69 delegated to the President the power to prohibit, curtail, and otherwise regulate the export of "any articles, materials or supplies, including technical data or any other information, subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States," regardless of destination.[13] This power, however, could only be exercised to effectuate the policies set forth in the Act.[14] Thus the congressional declarations of policy in section 3 of EAA '69[15] were crucial in defining the scope of executive power.

---

[12] An initial description of the export control system as it operated under EAA '69 permits a clearer presentation of the growth of new policies under that act and facilitates an understanding of the changes brought about by EAA '79. The general outlines of the system are unchanged by EAA '79, although the more important changes effected by EAA '79 will be noted.

[13] EAA '69, Pub. L. No. 91-184, § 4(b), 83 Stat. 841 (codified at 50 U.S.C. app. § 2403(b)(1) (1976)) (expired 1979). The language relating to jurisdiction was expanded in 1977. Act of Dec. 28, 1977, Pub. L. No. 95-223, § 301, 91 Stat. 1625 (expired 1979). Presidential authority extends to financing, transportation, and servicing of exports, and to any person participating in an export transaction. EAA '69, Pub. L. No. 91-184, § 4(b), 83 Stat. 841 (codified at 50 U.S.C. app. § 2403(b)(1) (1976)) (expired 1979); EAA '79, § 15, 50 U.S.C. app. § 2414 (Supp. III 1979).

EAA '79 covers exports of "goods" and "technology," §§ 5(a)(1), 6(a)(1), 50 U.S.C. app. §§ 2404, 2405, which for present purposes are substantially equivalent to the "articles, materials, or supplies" formerly described. *See id.* at § 16(3)-(4), 50 U.S.C. app. § 2415.

[14] EAA '69, Pub. L. No. 91-184, § 4(b), 83 Stat. 841 (codified at 50 U.S.C. app. § 2403(b)(1) (1976)) (expired 1979).

[15] *Id.* at § 3 (codified at 50 U.S.C. app. § 2402 (1976 & Supp. I 1977)).

A. Policies

Section 3 expressed inherently conflicting policies. On the one hand, it stated that the policy of the United States was to "encourage" trade with all countries with which the United States had diplomatic or trading relations[16] and to use the economic resources and trade potential of the United States "to further the sound growth and stability of its economy."[17] On the other hand, section 3 asserted three broad policies that justified restrictions on exports.

First, EAA '69 declared it was the policy of the United States to use export controls "to the extent necessary to exercise the necessary vigilance over exports from the standpoint of their significance to the national security of the United States."[18] "National security controls" were intended to restrict exports that would make a "significant contribution to the military potential of any other nation or nations which would prove detrimental to the national security of the United States."[19] With exports of arms and purely military equipment controlled under separate statutory authority,[20] national security controls under EAA '69 were directed at products and technologies primarily civilian in nature but with potential military applications: so-called "dual-use" items.[21] National security controls were intended to restrict dual-use exports to the Communist nations—the only nations considered threats to United States national security—but fear that exports to other countries might be diverted to Communist destinations meant that controls on most items restricted their export to all destinations.[22] National security controls under EAA '79 are substantially similar in purpose and scope.[23]

---

[16] The policy contained an exception for cases in which the President determined trade to be "against the national interest." *Id.* at § 3(1)(A) (codified at 50 U.S.C. app. § 2402(a)(A)).

[17] *Id.* at § 3(4) (codified at 50 U.S.C. app. § 2402(4)).

[18] *Id.* at § 3(2)(C) (codified at 50 U.S.C. app. § 2402(2)(C)).

[19] *Id.* at § 3(1) (codified at 50 U.S.C. app. § 2402(1)(B)). Even prior to the adoption of EAA '69, in March 1948, controls were imposed on exports to Europe to keep goods with military uses out of the hands of the Soviet Bloc. *See* SECRETARY OF COMMERCE, EXPORT CONTROL AND ALLOCATION POWERS, FOURTH QUARTERLY REPORT 2, 4 (1948); SECRETARY OF COMMERCE, EXPORT CONTROL AND ALLOCATION POWERS, THIRD QUARTERLY REPORT TO CONGRESS 14-15 (1948) [hereinafter cited as THIRD QUARTERLY REPORT].

[20] Arms Export Control Act of 1968, 22 U.S.C. §§ 2751-2794 (1976 & Supp. III 1979).

[21] *See Extension and Revision of the Export Administration Act of 1969—Part I: Hearings on H.R. 2344 Before the Subcomm. on International Economic Policy and Trade of the House Comm. on Foreign Affairs*, 96th Cong., 1st Sess. 89 (1979) (statement of Stanley Marcuss, Sr. Deputy Ass't Secretary of Commerce for Industry and Trade) [hereinafter cited as *House EAA Hearings Part I*]. During the Cold War period and through the 1960s, controls were applied to a wider range of goods. *See* text accompanying notes 86-91 *infra*. For most of the years when EEA '69 was in effect, however, national security export controls were understood to be primarily concerned with dual-use items. The term "national security export controls" is used in this sense throughout the Article.

Second, EAA '69 stated a national policy of using export controls "to the extent necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand."[24] "Short supply controls" were imposed on many commodities in the years immediately following the Second World War and during the Korean War but otherwise have been used infrequently.[25]

Finally, EAA '69 declared that it was United States policy to use export controls "to the extent necessary to further significantly the foreign policy of the United States and to fulfill its international responsibilities."[26]

By the mid-1970s, leaving aside the embargoes under TWEA, *see* note 2 *supra*, national security controls constituted the bulk of United States export controls.

[22] A 1979 report from the President to Congress, required by a 1977 amendment to EAA '69, concluded that only the Communist nations (except Yugoslavia) were subject to export controls for national security reasons because no other nations posed an immediate national security threat. National security controls were said to extend to other nations when necessary to avoid diversion of exported goods to the Communist nations. *See House EAA Hearings Part I, supra* note 21, at 646 (statement of William Root, Director, Office of East-West Trade, Department of State). This has been a longstanding orientation of the controls. *See, e.g.*, SECRETARY OF COMMERCE, EXPORT CONTROL AND ALLOCATION POWERS, ELEVENTH QUARTERLY REPORT TO CONGRESS 1 (1950) [hereinafter cited as ELEVENTH QUARTERLY REPORT].

[23] EAA '79, §§ 3(2)(A), 5, 50 U.S.C. app. §§ 2402(2)(A), 2404. *See* text accompanying notes 707-94 *infra*.

[24] EAA '69, Pub. L. No. 91-184, § 3(2)(A), 83 Stat. 841 (codified at 50 U.S.C. app. § 2402(2)(A) (1976)) (expired 1979).

[25] Berman & Garson, *supra* note 2, at 830. *See* SECRETARY OF COMMERCE, EXPORT CONTROL, SEVENTEENTH QUARTERLY REPORT TO CONGRESS 1 (1951); SECRETARY OF COMMERCE, FIRST QUARTERLY REPORT UNDER SECOND DECONTROL ACT OF 1947, at 1 (1947) [hereinafter cited as FIRST QUARTERLY REPORT]. Short supply control authority is continued by EAA '79, which also mandates controls on exports of crude oil, certain petroleum products, and red cedar logs. EAA '79, §§ 3(2)(C), 7(d)-(f), 7(i), 50 U.S.C. app. §§ 2402(2)(C), 2406 (Supp. III 1979).

[26] EAA '69, Pub. L. No. 91-184, § 3(2)(B), 83 Stat. 841 (codified at 50 U.S.C. app. § 2402(2)(B) (1976)) (expired 1979). Foreign policy also figured in the Export Control Act of 1949, ch. 11, § 2, 63 Stat. 7, and before that in the Second Decontrol Act of 1947, ch. 248, 61 Stat. 321, which extended certain production and allocation controls beyond the end of World War II. In the Second Decontrol Act, however, foreign policy was used in an affirmative sense: controls on production and distribution were justified so that the United States could fulfill its economic commitments abroad, principally Marshall Plan aid to Western

These three policies have been stated in almost identical form since the adoption of general peacetime export control legislation in 1949.[27] Congress has legislated some subtle changes in emphasis,[28] added subsidiary policies from time to time,[29] and made the Export Administration Act the site of the legislative provisions governing compliance with the Arab League boycott of Israel and other boycotts of friendly nations.[30] Since 1949, however, the President's power to control exports for national security, short supply, and foreign policy purposes has remained generally constant and, particularly in the case of foreign policy controls, largely unrestricted.

B. ADMINISTRATION

Since 1945, presidential "power, authority, and discretion" over export controls has been largely delegated to the Department of Commerce,[31] where most control and licensing deci-

---

Europe. *See* FIRST QUARTERLY REPORT, *supra* note 25, at 1-2. *See generally* Note, *Export Controls*, 58 YALE L. J. 1325 (1949).

[27] Export Control Act of 1949, ch. 11, § 2, 63 Stat. 7 (expired 1969).

[28] *See, e.g.*, EAA '69, Pub. L. No. 91-184, § 3(2)(B), 83 Stat. 841 (codified at 50 U.S.C. app. § 2402(2)(B) (1976)) (expired 1979) (export controls were only to be used to further "significantly" United States foreign policy).

[29] *See, e.g.*, Equal Export Opportunity Act, Pub. L. No. 92-412, tit. 1, § 103, 86 Stat. 644 (1972) (codified at 50 U.S.C. app. § 2402(6) (1976 & Supp. III 1979)) (expired 1979) (items subject to controls should be reviewed by appropriate government agencies and experts from private industry).

[30] The first antiboycott legislation was adopted in 1965. Act of June 30, 1965, Pub. L. No. 89-63, § 3(a), 79 Stat. 209 (expired 1969)). This legislation declared that it was United States policy to oppose boycotts directed against friendly nations and to "encourage and request" American exporters to take no action in support of such boycotts. *See id*. The Export Control Act expired on December 31, 1969, at which time EAA '69 took effect. The antiboycott policy, reenacted by EAA '69, Pub. L. No. 91-184, § 3(5), 83 Stat. 841 (codified at 50 U.S.C. § 2402(5) (1976)) (expired 1979), was strengthened by the Export Administration Amendments of 1977 to state that it was United States policy "to encourage and, in specified cases, to require" American exporters to refuse to participate in such boycotts. Pub. L. No. 95-52, § 202, 91 Stat. 235 (amending 50 U.S.C. app. § 2402(5) (1976)) (expired 1979). Detailed antiboycott rules were added to the Act. *Id*. at § 201(a). The same policy and rules are included in EAA '79. *See* EAA '79, §§ 3(5), 8, 50 U.S.C. app. §§ 2402, 2407 (Supp. III 1979).

[31] Berman & Garson, *supra* note 2, at 805. Both EAA '69, Pub. L. No. 91-184, § 4(e), 83 Stat. 841 (codified at 50 U.S.C. app. § 2403(e) (1976)) (expired 1979), and the Export Control Act of 1949, ch. 11, § 3(b), 63 Stat. 7 (expired 1969), authorized such redelegation. The last delegation under EAA '69 was Exec. Order No. 12,002, 42 Fed. Reg. 35,623 (1977), which granted most export control authority to the Secretary of Commerce with the power of successive delegation. Exec. Order No. 12,214, 45 Fed. Reg. 29,783 (1980), revises the scheme of delegation in light of EAA '79.

EAA '79 also permits presidential redelegation, with important exceptions. Certain presidential powers may not be delegated. EAA '79, §§ 4(e), 50 U.S.C. app. § 2403 (Supp. III 1979). The roles of the Secretaries of Commerce, State, sions have been made by a group of regulators now called the Office of Export Administration (OEA).[32] The OEA and its predecessor agencies have been able to operate with an unusually free hand because virtually all export control functions have been exempted from the Administrative Procedure Act.[33] The administrative hearings, rulemaking procedures, and judicial review that operate as a check on most other executive agencies have not restricted the activities of the Department of Commerce, which continues to operate free of these constraints under EAA '79.[34] Nonetheless, criminal, civil, and administrative penalties can be imposed for violations of the regulations, orders, or licenses issued by the OEA,[35] as well as for violations of the statute itself.

---

and Defense are to a large degree mandated. *See id.* at §§ 5(a), 6(a), 15, 50 U.S.C. app. §§ 2404, 2405, 2414. Finally, authority may only be delegated to an official of a department or agency whose head is appointed by the President with the advice and consent of the Senate. *See id.* at § 4(e), 50 U.S.C. app. § 2403. This limitation was intended to restrict the role of the National Security Council (NSC) in export controls, largely because of NSC refusal to share information with Congress. *See generally* S. REP. NO. 96-169, 96th Cong., 1st Sess. 15 [hereinafter cited as S. REP. NO. 96-169], *reprinted in* [1979] U.S. CODE CONG. & AD. NEWS 1147, 1162. The effort to limit the role of the NSC appears to have been less than successful. For example, the review of export licenses and control policy toward the U.S.S.R. (undertaken in January, 1980) following the Soviet invasion of Afghanistan was carried out under the direction of the NSC. *See* U.S. EXPORT WEEKLY (BNA) No. 289, A-5 (Jan. 8, 1980). A government source stated that the role of the Commerce Department in the review was minimal, and that the change in actual authority of the NSC amounted to the "emasculation" of the Commerce Department. *Id.*, No. 291, A-1 (Jan. 22, 1980). The role of the NSC has become a serious political and legal issue. *See generally* Comment, *The Constitutional and Legal Position of the National Security Adviser and Deputy Adviser*, 74 AM. J. INT'L L. 634 (1980).

[32] *See* UNITED STATES COMPTROLLER GENERAL, REPORT TO CONGRESS: ADMINISTRATION OF U.S. EXPORT LICENSING SHOULD BE CONSOLIDATED TO BE MORE RESPONSIVE TO INDUSTRY 3-4 (1978) [hereinafter cited as COMPTROLLER GENERAL REPORT 1978]; Note, *Export Licensing: Uncoordinated Trade Repression*, 9 GA. J. INT'L & COMP. L. 333, 341-42, 347-50 (1979). The OEA is required in many cases to consult with other agencies, notably the Departments of Defense, State, and Energy, on licensing applications; usually unanimous consent of these agencies is required in such cases. *See* Note, *supra*, at 341-42. EAA '79 mandates the roles of Defense and State more explicitly than prior legislation and provides that Commerce is to have primary responsibility for licensing decisions. EAA '79, §§ 5(a)(1), 6(a)(1), 10, 50 U.S.C. app. §§ 2404(a)(1), 2405(a)(1), 2409 (Supp. III 1979).

[33] EAA '69, Pub. L. No. 91-184, § 8, 83 Stat. 841 (codified at 50 U.S.C. app. § 2407 (1976)) (expired 1979). *See* the Export Control Act of 1949, ch. 11, § 7, 63 Stat. 7 (expired 1969).

[34] EAA '79, § 13, 50 U.S.C. app. § 2412 (Supp. III 1979). The Act requires the Secretary of Commerce to establish an administrative appeal procedure. *Id.* at § 10(j), 50 U.S.C. app. § 2409.

[35] EAA '79, § 11, 50 U.S.C. app. § 2410 (Supp. III 1979); EAA '69, Pub. L. No. 91-184, § 6, 83 Stat. 841, *as amended by* Act of Dec. 28, 1977, Pub. L. No. 95-223, tit. III, § 301(b)(2), 91 Stat. 1629; Export Administration Amendments of 1977, Pub.

EAA '69 did seek to impose some procedural restraints on the Executive by calling for periodic reports to Congress and consultation with American exporters and other nations.[36] The statute also attempted to provide "an element of due process"[37] for exporters by, for example, setting time limits for OEA action on license applications, requiring that exporters be allowed to respond to questions raised about their applications in difficult cases, and mandating that applicants be informed of the statutory basis for denial of their applications.[38] Even the authors of these procedural safeguards, however, intended them to hold the Executive accountable only "to some minimal degree."[39] The adequacy of the safeguards was severely criticized,[40] and additional procedural requirements were included in EAA '79.[41]

C. LICENSING

1. *Types of Licenses*

Operational details of the export control system are set out in the Export Administration Regulations (Regulations) of the Commerce Department.[42] The scheme of the system is to prohibit, with few exceptions, all exports from the United States to any destination unless licensed by the OEA.[43] This approach is

---

L. No. 95-52, tit. I, §§ 103(d), 112, tit. II, § 203(a), 91 Stat. 237 (codified at 50 U.S.C. app. § 2405 (1976 & Supp. I 1977)) (expired 1979).

[36] EAA '69, Pub. L. No. 91-184, § 10, 83 Stat. 841, *as amended by* Export Administration Amendments of 1977, Pub. L. No. 95-52, §§ 116(a), (b)(2), 91 Stat. 243; Export Administration Amendments of 1974, Pub. L. No. 93-500, § 3(b), 88 Stat. 1552 (codified at 50 U.S.C. app. § 2409 (1976 & Supp. I 1977)) (expired 1979) (requiring periodic reports). *See also* EAA '69, at § 3(3) (codified at 50 U.S.C. app. § 2402(3)); EAA '69, at § 5 (codified at 50 U.S.C. app. § 2404(c)) (requiring consultation). Consultation and reporting requirements of EAA '79 are discussed at text accompanying notes 765-75 *infra*.

[37] H.R. REP. NO. 95-190, 95th Cong., 1st Sess. 13 [hereinafter cited as H.R. REP. NO. 95-190], *reprinted in* [1977] U.S. CODE CONG. & AD. NEWS 362, 374.

[38] Export Administration Amendments of 1974, Pub. L. No. 93-500, § 5(a), 88 Stat. 1552, *as amended by* Export Administration Amendments of 1977, Pub. L. No. 95-52, § 107, 91 Stat. 243 (codified at 50 U.S.C. app. § 2403(g) (1976 & Supp. I 1977) (expired 1979).

[39] H.R. REP. NO. 95-190, *supra* note 37, at 13.

[40] *See, e.g.*, COMPTROLLER GENERAL REPORT 1978, *supra* note 32 at 1; Note, *supra* note 32, at 353-55.

[41] *See* EAA '79, §§ 5, 6, 50 U.S.C. app. §§ 2404, 2405 (Supp. III 1979).

[42] The Regulations, published by the Department of Commerce in looseleaf form, are also published in the Federal Register as issued and are codified at 15 C.F.R. §§ 368-399 (1980). *See generally* Berman & Garson, *supra* note 2, at 813-34.

[43] *See* 15 C.F.R. § 370.3(a) (1980). The principal exceptions are: (1) most exports to Canada for consumption there, *id.* at § 370.3(a)(1); (2) certain exports to the United States armed forces, *id.* at § 370.3(a)(2); (3) exports regu-

not as burdensome as it might first appear. The bulk of American exports leave the country under one of several "general licenses," which are OEA regulations of general applicability that permit the export of certain types of goods and information to certain destinations without any specific authorization for individual transactions and without the issuance of any authorizing documents.[44] Even under a general license, however, an exporter must file a "Shipper's Export Declaration" at the port of exit or place of mailing,[45] giving certain information about the transaction (partly for statistical and partly for control purposes), and an exporter may also be required to place warnings against diversion of the goods from their original destination on its bill of lading and commercial invoice.[46] Further, an exporter may not without authorization transfer its bill of lading, Shipper's Export Declaration, or any other "export control document"[47] to any person except as necessary to complete the originally contemplated transaction or in connection with certain commercial liens.[48]

When the executive branch determines that stricter control over a particular class of exports is necessary for reasons of national security, foreign policy, or short supply, the specific prior approval of OEA for individual transactions within that class may be required. A license of this sort, covering a particular transaction and embodied in a particularized document issued upon application, is known as a "validated license."[49] Generally, the term "imposition of export controls" and similar phrases refer to the adoption of a validated license requirement for a certain class of export transactions.[50] This Article will follow that usage, but doing so should not obscure the fact that

---

lated by another United States agency, *id.* at § 370.3(a)(3); and (4) exports to territories, dependencies, and possessions of the United States. *Id.* at § 370.4.

[44] 15 C.F.R. § 370.2 (1980). By far the most important is General License G-DEST, which authorizes the export of any commodity listed on the Commodity Control List (CCL) to any destination for which the CCL does not require a validated license. *Id.* at § 371.3. *See* text accompanying notes 69-72 *infra*.

[45] 15 C.F.R. § 371.2(a) (1980).

[46] *Id.* at § 386.6(a). "Destination control statements" are required for every export under a validated license. *Id.* at § 386.6(a)(1)(i).

[47] *Id.* at § 387.9(a)(1)(i).

[48] *Id.* at § 387.9(b)(1).

[49] *Id.* at § 372.2(a).

[50] EAA '79 continues the use of general and validated licenses and also provides for a "qualified general license"—issued only upon application but authorizing multiple exports—and other types of licenses. *See generally* EAA '79, § 4(a)(2), 50 U.S.C. app. § 2403(a)(2) (Supp. III 1979). *See also* 45 Fed. Reg. 45,894 (1980) (regulations governing use of qualified general license).

under the Regulations all exports are subject to some degree of control.

A validated license authorizes a specific export transaction: the export of specific goods (or information) to a specific buyer in a specific country for a specific end use.[51] The applicant must specify each of these factors in the license application and be prepared to substantiate them with documentary evidence;[52] in particular, an applicant must usually include not only its own statement of the contemplated end use of the export, but also that of the ultimate purchaser.[53] In the case of certain strategic exports to friendly nations,[54] the purchaser's government will become involved in supervising the disposition of the goods exported to prevent their diversion to Communist nations.[55]

The Regulations make it unlawful to reexport, transship, or divert, directly or indirectly and in whole or in part, any United States export from its originally authorized ultimate destination, unless a new license covering the reexport has been obtained from the OEA or unless the Regulations permit reexport.[56]

2. *Country Groups*

Although most validated license requirements based on national security considerations apply to the export of controlled items regardless of their destination, the export licensing system does distinguish among importing nations with respect to both validated license requirements and licensing policy.[57] These distinctions are based on both national security and foreign policy considerations. The Regulations reflect the distinctions primarily by assigning nations to various "country groups."[58]

---

[51] 15 C.F.R. § 372.9(a) (1980).

[52] *Id.* at § 372.6(a)(2).

[53] *Id.* at § 375.2.

[54] Participants are the NATO nations, Austria, Hong Kong, and Japan; Switzerland and Yugoslavia cooperate with similar programs. *Id.* at §§ 375.3(b)-375.5.

[55] The government may issue an International Import Certificate (IC), *id.* at § 375.3(a)-(h), or a Delivery Verification (DV), *id.* at § 375.3(i). *See* Berman & Garson, *supra* note 2, at 817.

[56] *Id.* at § 374.1. The permissive reexport provisions include instances in which goods could be exported directly from the United States to the new destination under certain general licenses, reexports back to the United States, and most reexports to Canada. *Id.* at § 374.2. *See* text accompanying notes 591-617 *infra*.

[57] *See* notes 22 *supra*, 105 *infra* and accompanying text.

Country Group Z includes North Korea, Vietnam, Cambodia, and Cuba.[59] A validated license is required for virtually all exports to Group Z, and the general policy of the Commerce Department is to deny all such license applications,[60] although humanitarian exports are sometimes approved.[61]

Group Y consists of the U.S.S.R. and several Eastern European Communist nations as well as Outer Mongolia and Laos.[62] The Regulations state that licenses for exports of controlled items to these countries will be approved if the items are for a civilian end use and do not contribute to the military potential of the importing nation in a way detrimental to United States national security,[63] but further restraints are in fact imposed for foreign policy reasons. Group W (Poland and Hungary), Group Q (Romania), and Group P (The People's Republic of China)[64] are subject to similar validated license requirements but to more lenient licensing policies than those applicable to Group Y.[65]

Group T encompasses the countries of the Western Hemisphere, other than Canada and Cuba. While most national security controls apply to Group T, licenses for exports to destinations in Group T are usually approved without objection.

---

[58] 15 C.F.R. Pt. 370, Supp. No. 1 (1980).

[59] *Id.* This Article sometimes refers to these countries as the "embargoed nations." The Group Z requirements implement the export portion of the embargoes imposed under the TWEA.

[60] 15 C.F.R. § 385.1 (1980), *as amended by* 45 Fed. Reg 1595 (1980).

[61] Periodic reports submitted to Congress by the Commerce Department contain several examples of humanitarian exports: $9,720 of contraceptives approved for export to Cuba; $807,760 of hospital supplies and $389,390 of relief commodities to Vietnam, *see* Secretary of Commerce, Export Administration, 113th Semi-Annual Report to Congress 29 (1976); $1,643,000 of DDT to Cambodia for control of malaria epidemic, *see* Secretary of Commerce, Export Administration, 115th Semi-Annual Report to Congress 29 (1977).

[62] 15 C.F.R. Pt. 370, Supp. No. 1 (1980).

[63] *Id.* at § 385.2(a).

[64] *Id.* at Pt. 370, Supp. No. 1, *as amended by* 45 Fed. Reg. 27, 922 (1980).

[65] The validated license requirements for exports to these four nations have been virtually identical to those applicable to Group Y for some time. The CCL of June 1, 1979, for example, contained no entries that distinguished Group Q or Group W from Group Y. The People's Republic of China was at that time included in Group Y, but the validated license requirements for exports to Group P, established in 1980, remain identical to those for Group Y. Group P was created to permit the application of national security licensing standards different from those applied to Group Y, particularly to the U.S.S.R. 45 Fed. Reg. 27, 922 (1980). While Groups Q and W are treated in the same statement of licensing policy as Group Y, 15 C.F.R. § 385.2 (1980), it seems certain that applications for exports to Poland, Hungary, or Romania are received more favorably than those for exports to the U.S.S.R., East Germany, or Bulgaria.

Group V contains all countries not specifically included in any other country group, except Canada, to which most exports can be made without a validated license.[66] Most national security controls also extend to exports destined for Group V, but licenses are usually approved if there is no concern with diversion to Communist destinations.[67] Within Group V, however, certain nations are subject to special validated license requirements and unusually strict licensing policies for foreign policy reasons.[68]

3. *Commodities*

All commodities that require a validated license for export to any destination are identified in a single comprehensive schedule, the Commodity Control List (CCL).[69] The CCL groups commodities into general categories, such as metalworking machinery, electrical equipment, and chemicals,[70] then into more specific entries identified by an Export Commodity Control Number (ECCN). An exporter, having located the ECCN for the goods to be exported, can determine from the CCL whether export to a particular country group requires a validated license, whether any special restrictions apply to particular nations within a group, whether the purchaser's government must confirm delivery, and whether any of several special licensing procedures are available.[71] Virtually all commodities are in fact listed on the CCL, but the great majority are included only as part of several broad "basket entries," which function to require a validated license for all exports to Group Z and other embargoed destinations.[72]

---

[66] 15 C.F.R. § 385.6 (1980).

[67] *Id.* at § 385.4(b).

[68] *Id.* at § 385.4, *as amended by* 46 Fed. Reg. 1258 (1981); 45 Fed. Reg. 1595 (1980). South Africa and Namibia are most prominently subject to more restrictive treatment. *Id.* at § 385.4(a), *as amended by* 46 Fed. Reg. 1258 (1981); 45 Fed. Reg. 1595 (1980). Yugoslavia is generally treated like a Western European nation. *Id.* § 385.4(c).

[69] The CCL is published by the Commerce Department and incorporated by reference at 15 C.F.R. § 399.1 (1980). A single schedule has been used only since 1965. *See* Berman & Garson, *supra* note 2, at 820.

[70] *See* The Commodity Control List and How to Use It ¶ (b) (introduction to the CCL) (available from the OEA, Department of Commerce) [hereinafter cited as The Commodity Control List], *incorporated by reference in* 15 C.F.R. § 399.1 (1980).

[71] *See Export Administration Act: Agenda for Reform: Hearings Before the Subcomm. on International Economic Policy and Trade of the House Comm. on International Relations*, 95th Cong., 2d Sess. 45 (1978) (report on simplification of the Regulations, submitted by the Secretary of Commerce pursuant to The Export Administration Amendments of 1977, § 114, 50 U.S.C. app. § 2406 (Supp. I 1977) (expired 1979)); The Commodity Control List, *supra* note 70, at ¶ (f).

4. *Information*

The export licensing system regulates exports of information as well as goods. The kind of information subject to control—"technical data" under EAA '69[73] and "technology" under EAA '79[74]—is industrial information that can be used in the design, production, manufacture, utilization, or reconstruction of goods.[75] It may be in tangible form, such as a prototype, blueprint, or manual, or in intangible form, such as "know-how" or the performance of technical services.[76] Information in tangible form is normally considered to be exported when it is physically sent abroad, while intangible information is considered to be exported when it is "released" either abroad or in the United States with knowledge that it will be transmitted abroad.[77] Release may occur through visual inspection of American equipment or facilities, oral communication, or the application abroad of know-how acquired in the United States.[78] As with commodities, exports of controlled information must be made under either a general or a validated license.[79]

The export of information that has been made generally available to the public, and of nonpublic scientific or educational data not related to industrial processes, is authorized by the most important technical data general license—General License GTDA.[80] Some technical data not eligible for export under this license, such as proprietary information about manufacturing processes, may be exported under a more limited general license—GTDR—to most non-Communist nations,[81] subject in some cases to a requirement that the importer give certain written assurances concerning later disposition of the data and its "direct product."[82] Nonpublic technical information on certain subjects requires a validated license for export to virtually all destinations (usually with the exception of Canada).[83]

---

[72] The Commodity Control List, *supra* note 70, at ¶ (c). Compare the operation of General License G-DEST, *supra* note 44. If an item appears on the CCL only as part of a typical basket entry (*e.g.*, "all other electrical and power generating equipment n.e.s. [not elsewhere specified]" (ECCN 6299)), it may be exported to any destination other than Group Z and any other embargoed destinations specified on the CCL (*e.g.*, certain South African institutions, *see* text accompanying notes 245-56 *infra*) under this General License.

[73] EAA '69, Pub. L. No. 91-184, § 4(b)(1), 83 Stat. 841 (codified at 50 U.S.C. app. § 2403(b)(1) (Supp. I 1977)) (expired 1979).

[74] EAA '79, §§ 5-6, 50 U.S.C. app. §§ 2404-2405 (Supp. III 1979).

[75] *Id*. at § 16(4), 50 U.S.C. app. § 2415(4); 15 C.F.R. § 379.1(a) (1980).

[76] 15 C.F.R. § 379.1(a) (1980).

[77] *Id*. at § 379.1(b)(1).

[78] *Id*. at § 379.1(b)(2).

[79] *Id*. at § 379.2. A major innovation in EAA '79 is an attempt to focus national security controls on technology rather than goods. EAA '79, §§ 2(8), 5(d), 50 U.S.C. app. §§ 2401(8), 2404(d) (Supp. III 1979).

[80] 15 C.F.R. § 379.3 (1980).

Reexport controls also apply to information exports,[84] and in some circumstances the controls extend beyond reexport of the information itself and forbid the unauthorized export of foreign-produced direct products of the information to Country Groups Q, W, Y, P, and Z.[85]

III. THE GROWTH OF FOREIGN POLICY EXPORT CONTROLS

A. The Expanding Meaning of Foreign Policy Under The Export Administration Act of 1969

1. *The Traditional Role of Foreign Policy*

Since American peacetime export controls began following World War II, the control program has been predominantly concerned with restricting exports to Communist nations.[86] By 1950, most exports to the Soviet Union and Eastern Europe had been placed under control,[87] and out of concern with diversion many exports to other nations were controlled as well.[88] At first, in spite of their extensive product coverage, these East-West trade restrictions were justified primarily on national security grounds, based on the threat perceived in the establishment of Soviet dominance in Eastern Europe.[89] Later, American involvement in the Korean conflict led to a total embargo of North Korea and the People's Republic of China under the Trading with the Enemy Act[90] and provided an additional national security justification for controlling exports to their European Communist allies.[91]

---

[81] *Id.* at § 379.4. No technical data may be exported to Group Z under General License GTDR, *id.* at § 379.4(a), and there are strict limits on exports to Groups P, Q, W, and Y without a validated license.

[82] 15 C.F.R. § 379.4(f) (1980).

[83] *Id.* at § 379.4(c)-(d).

[84] *Id.* at § 379.8.

[85] *Id.* at § 379.8(a)(3). *See also* text accompanying notes 591-617 *infra*.

[86] *See* Berman & Garson, *supra* note 2, at 796.

[87] *Id.* at 796, 818-19. Controls were instituted as early as 1948 to prevent strategic items from going to Eastern Europe. *See* Third Quarterly Report, *supra* note 19, at 14. By 1950, this effort was the major focus of the program. *See* Eleventh Quarterly Report, *supra* note 22, at 1-2. By 1951, an export license was required "before shipment to the Soviet bloc of all United States goods" and technical data. *See* Secretary of Commerce, Export Control, Fifteenth Quarterly Report to Congress 1 (1951). At least some licenses for nonstrategic items were granted. *See* Secretary of Commerce, Export Control, Twenty-Eighth Quarterly Report to Congress 4 (1954); Secretary of Commerce, Export Control, Twenty-Fifth Quarterly Report to Congress 5 (1953); [hereinafter cited as Twenty-Fifth Quarterly Report]. Furthermore, some nonstrategic items were eventually allowed to be sold to the Communist nations under a special General License, GLSA. *See* Secretary of Commerce, Export Control, Fifty-Second Quarterly Report to Congress 8 (1960).

The national security rationale for strict controls on American trade with the European Communist states became less compelling after the truce in Korea and the partial relaxation of tension in Europe associated with the death of Stalin.[92] Although Western Europe took advantage of this change in climate to expand trade with the East,[93] United States export policy remained highly restrictive.[94] The broad unilateral export controls of the late 1950s and 1960s—which continued to cover many commodities that could not have contributed significantly to Communist military strength—may therefore be said to have been based largely upon American foreign policy.[95]

---

[88] *See* Berman & Garson, *supra* note 2, at 813, 818-19. *Cf.* SECRETARY OF COMMERCE, EXPORT CONTROL AND ALLOCATION POWERS, SEVENTH QUARTERLY REPORT TO CONGRESS 4 (1949) (imposition of controls to prevent transshipment of certain commodites) [hereinafter cited as SEVENTH QUARTERLY REPORT]; ELEVENTH QUARTERLY REPORT, *supra* note 22, at 1, 3.

[89] *See* Berman & Garson, *supra* note 2, at 796. Commerce Department quarterly reports on the export control system began to discuss national security issues, along with short supply problems, as early as 1948. *See* SECRETARY OF COMMERCE, EXPORT CONTROL AND ALLOCATION POWERS, FOURTH QUARTERLY REPORT TO CONGRESS 2, 4 (1948). Thereafter, the reports indicate the increasing importance of security controls. *See, e.g.*, SECRETARY OF COMMERCE, EXPORT CONTROL AND ALLOCATION POWERS, EIGHTH QUARTERLY REPORT TO CONGRESS 2 (1953); SEVENTH QUARTERLY REPORT, *supra* note 88, at 3. By 1953, a separate section of the reports was devoted to security controls. *See, e.g.*, TWENTY-FIFTH QUARTERLY REPORT, *supra* note 87, at 3. Originally, the needs of European recovery had provided a foreign policy justification for export controls. *See* note 26 *supra*.

[90] *See* Berman & Garson, *supra* note 2, at 792-93; note 2 *supra*.

[91] *See* SECRETARY OF COMMERCE, EXPORT CONTROL, THIRTEENTH QUARTERLY REPORT TO CONGRESS 1-3 (1950); Berman & Garson, *supra* note 2, at 799.

[92] G. ADLER-KARLSSON, WESTERN ECONOMIC WARFARE: 1947-1967 at 7, 83-86 (1968); Berman & Garson, *supra* note 2, at 799. *Cf.* A. LOWENFELD, TRADE CONTROLS FOR POLITICAL ENDS § 1.23, at 164 (1977) (even prior to Stalin's death, Soviets sought trade with Western nations).

[93] A. LOWENFELD, *supra* note 92, § 1.1, at 148, § 1.23 at 164-65; Berman & Garson, *supra* note 2, at 799.

[94] A. LOWENFELD, *supra* note 92, § 1.1, at 148; Berman & Garson, *supra* note 2, at 799. Controls on Poland and Romania, however, were relaxed in 1957 and 1964, respectively. *See* note 65 *supra*.

Outside of Europe, the embargo of the People's Republic of China and North Korea was extended to Cuba in 1962,[96] to North Vietnam in 1964,[97] then to all of Vietnam[98] and Cambodia in 1975.[99] Both in Cuba and Southeast Asia, national security considerations—growing out of the Bay of Pigs incident, the Cuban missile crisis, and the Vietnam War—originally supported the imposition of trade controls. Subsequently, however, foreign policy became the express rationale for these embargoes,[100] and except for the embargo of the People's Republic of China, they have remained fixtures of American trade policy.

The American controls on trade with Eastern Europe, on the other hand, began to decline by the late 1960s;[101] EAA '69 was intended to spur this trend.[102] With the change in attitude represented by the 1972 trade agreement between the United States and the U.S.S.R.,[103] the dismantling of controls accelerated. American restrictions on trade with Eastern Europe came to approach, though always exceeding, the level of controls—a level which called for restrictions on only those commodities with military applications—that for some time had been maintained by other major Western countries operating through an international organization known as COCOM.[104] By the mid-1970s, only a relatively small number of high technology, dual-use items required a validated license for export from the United States.[105]

---

[95] *See* Berman & Garson, *supra* note 2, at 799-800, 822. Quarterly reports of the Commerce Department during this period often included statements to the effect that controls were established under the national security policy of the Export Control Act, "but are of course administered within the broad context of United States foreign policy . . . . [F]requently these controls are exercised predominantly to further foreign policy objectives." *See, e.g.*, SECRETARY OF COMMERCE, EXPORT CONTROL, TWENTY-SIXTH QUARTERLY REPORT TO CONGRESS 1 (1954). *Cf.* SECRETARY OF COMMERCE, EXPORT CONTROL, FIFTY-EIGHTH QUARTERLY REPORT TO CONGRESS 3 (1962) (considers both national security and foreign policy as supporting controls on the Communist bloc).

The broad unilateral controls may also be said to have rested on a belief that any contribution to the industrial strength of the Soviet Union was as great a threat to American national security as a contribution to military strength. A 1962 amendment to the Export Control Act seems explicitly to have adopted this view. Act of July 1, 1962, Pub. L. No. 87-515, § 2, 76 Stat. 127 (expired 1969).

[96] The Cuban Import Regulations of 1962 were replaced in 1963 by the more comprehensive Cuban Assets Control Regulations. *See* note 2 *supra*. In addition to the general authority of the Trading with the Enemy Act, *see id.*, the Cuban embargo had specific Congressional sanction. *See* 22 U.S.C. § 2370(a)(1) (1976 & Supp. III 1979).

[97] North Vietnam was made subject to the Foreign Assets Control Regulations, *see* note 2 *supra*, along with China and North Korea on May 5, 1964. 29 Fed. Reg. 6010 (1964). The National Liberation Front, Viet Cong, and Liberation Red Cross were later made "specially designated nationals" of North Vietnam. 31 Fed. Reg. 8586 (1966).

[98] South Vietnam was included on April 30, 1975. 31 C.F.R. § 500.204(a)(1) (1975).

[99] The embargo was extended to Cambodia on April 17, 1975. *Id.* at § 500.201(d).

[100] *See id.* at § 385.1 (1980), *as amended by* 45 Fed. Reg. 1595 (1980).

[101] The first, largely symbolic, step was taken by President Johnson in 1966. *See* Berman & Garson, *supra* note 2, at 822-83.

[102] The more liberal attitude of EAA '69 toward trade with the East was symbolized in the language of its title, which used the neutral term "administration" instead of the more negative word "control". *See* A. LOWENFELD, *supra*

Thus foreign policy considerations had played a major role in supporting the broad anti-Communist restrictions that had been the almost exclusive preoccupation of the export control program since its inception. By the mid-1970s, however, the role of foreign policy in anti-Communist controls had declined to providing justification for the Group Z embargoes and for occasional variations in the strictness with which exports to particular Communist nations were controlled.[106] American

---

note 92, § 1.32, at 169-73; *See generally* Berman, *The Export Administration Act of 1969: An Analysis and Appraisal*, 3 AM. REV. EAST-WEST TRADE 19 (1970).

[103] *See* A. LOWENFELD, *supra* note 92, § 2.2, at 187-190.

[104] G. ADLER-KARLSSON, *supra* note 92, at 7-8, 89-90. Multilateral controls administered through COCOM are discussed further at text accompanying notes 393-401 *infra*.

[105] A. LOWENFELD, *supra* note 92, § 4.21, at 230-32. Most items on the CCL since the mid-1970s have been dual-use products multilaterally controlled to all destinations through COCOM. For example, on the CCL issued as of June 1, 1979, 126 entries were of this character, 46 were dual-use items unilaterally controlled by the United States to all destinations for national security purposes, and another 26 were unilaterally controlled to specific destinations. Many of the controls in the latter group applied only to exports to Communist nations, but the group included some foreign policy controls that are discussed herein. In addition, ten "basket" entries extended controls over all exports to the embargoed nations. *See also* 15 C.F.R. §§ 385.2(a), .4(b) (1980).

[106] *See* Berman & Garson, *supra* note 2, at 819-20. Such refinements have included (1) extension of favorable treatment to Yugoslavia, Poland, Hungary, and Romania, *see* note 65 *supra*; (2) reduction of controls on third country exports containing United States-origin components to Cuba, 15 C.F.R. § 385.1 (1980), *as amended by* 45 Fed. Reg. 1595 (1980); Cuban Assets Control Regulations, 31 C.F.R. § 515.559 (1980), in line with the policy of the Organization of American States, *see U.S. Takes Steps to Conform with OAS Action on Cuba*, 73 DEP'T ST. BULL. 404, 404 (1975); and (3) the transfer of the People's Republic of China from the embargo list to Country Group Y, 15 C.F.R. Part 370, Supp. 1 (1972), then to a newly established country Group P. *See* note 65 *supra*. The more favorable treatment given exports to the People's Republic of China in 1980 contrasts sharply with a tightening of controls on exports to the U.S.S.R. following the Soviet invasion of Afghanistan. *See* text accompanying notes 802-09 *infra*. While the People's Republic of China was in Country Group Y, the United States sought to maintain a "balanced" export control policy toward it and the U.S.S.R. *See U.S. Export Control Policy and Extension of the Export*

controls on East-West trade had become predominantly national security controls in the modern sense, concentrating on goods and technology with military applications and, out of necessity, regulating the export of such items to all destinations.[107]

Until recently, export controls based predominantly on foreign policy considerations and not within the prevailing anti-Communist focus of the control program have been quite rare. Three types can be identified: controls implementing actions of the United Nations, controls restricting the export of nuclear items, and controls aimed at preserving stability in volatile regions of the world.[108]

The principal set of controls implementing United Nations action has been the embargo on trade with Rhodesia (1966 to 1979).[109] Controls on arms exports to South Africa are also in effect as a result of United Nations action.[110]

Most controls on nuclear power exports are administered under special statutes by agencies other than the Commerce Department,[111] but Commerce has retained licensing jurisdiction over many items with nuclear applications.[112] Validated licenses are required for the export of any such items to be

---

Administration Act: Hearings on S. 737 Before the Subcomm. on International Finance of the Senate Comm. on Banking, Housing and Urban Affairs, Part I, 96th Cong., 1st Sess. 189 (1979) (statement of Richard Cooper, Under Secretary of State for Economic Affairs) [hereinafter cited as *Senate EAA Hearings Part I*].

[107] *See* note 105 *supra*. The ECCN of an item controlled multilaterally to all destinations ends with the letter "A"; that of an item controlled unilaterally to all destinations ends with the letter "B." The IC procedure, *see* note 55 *supra* and accompanying text, applies only to "A" commodities, although the DV procedure may apply to others. 15 C.F.R. §§ 375.3(a), (i) (1980).

[108] A section entitled Special Foreign Policy Controls was added to the periodic reports of the Commerce Department in 1966. *See* SECRETARY OF COMMERCE, EXPORT CONTROL, SEVENTY-FIFTH QUARTERLY REPORT TO CONGRESS 28 (1966). Until recently, this section only noted antiboycott activities and the three types of controls referred to in text.

[109] *See* 15 C.F.R. § 385.3 (1979) (repealed 1979); note 2 *supra*. The Commerce Department drew on authority under the EAA as well as under the United Nations Participation Act to enforce the export side of the embargo. *See* 15 C.F.R. § 385.3 (1979) (repealed 1979). Further, the Rhodesian embargo, like the South African arms embargo, was temporarily implemented voluntarily, before the authority of the United Nations Participation Act could become effective. *See* note 2 *supra*.

[110] *See* 15 C.F.R. § 385.4(a) (1980); note 2 *supra*.

[111] *See* note 1 *supra*.

[112] *See* 15 C.F.R. § 378.2 (1980). Certain nuclear-related items previously controlled by Commerce were transferred to the jurisdiction of the Nuclear Regulatory Commission in 1978. *See* 43 Fed. Reg. 35,027 (1978).

used in making or testing nuclear weapons[113] or in the construction or operation of various nuclear facilities.[114] Since late 1980, all items controlled for national security purposes have been subject to review under the United States nonproliferation policy before export for nuclear-related uses or to nuclear-related purchasers.[115]

Finally, controls are sometimes imposed on exports of dual-use items to promote "regional stability" in situations of hostility or near hostility[116] and for related political objectives.[117] The prime examples of such controls have been the subjection of many Middle East nations to restrictive licensing policies and a few unique validated license requirements since the 1967 war,[118] and the denial of licenses for exports to those countries of items that could be used in military operations.[119]

---

[113] These controls implement the Limited Nuclear Test Ban Treaty, 1963, 14 U.S.T. 1313, 480 U.N.T.S. 43. *See* 15 C.F.R. § 378.3 (1980).

[114] *See* 15 C.F.R. § 378.4 (1980). These were instituted in 1978 to implement the United States nuclear nonproliferation policy. 43 Fed. Reg. 35,028 (1978).

[115] 45 Fed. Reg. 85,446 (1980).

[116] Under the regional stability policy, the Commerce and State Departments review proposed exports of items that might contribute to the military capabilities of countries engaged, or expected to be engaged, in local military conflicts or that might otherwise contribute to regional tensions. *See U.S. Export Control Policy and Extension of the Export Administration Act: Hearings on S. 737 and S. 937 Before the Subcomm. on International Finance of the Senate Comm. on Banking, Housing and Urban Affairs, Part III*, 96th Cong., 1st Sess. 41 (1979) (statement of Frank Weil) [hereinafter cited as *Senate EAA Hearings Part III*]; *Senate EAA Hearings Part I, supra* note 106, at 223 (statement of Department of State). Regional stability concerns usually lead to restrictive policies on licensing exports of items that already require validated licenses for national security reasons, rather than new validated license requirements. *See* note 118 *infra*.

[117] The United States has occasionally restricted exports that would improve the military capabilities of a friendly nation in situations in which American political relations with third countries might be jeopardized. *See Senate EAA Hearings Part III, supra* note 116, at 41-42 (statement of Frank Weil); *Senate EAA Hearings Part I, supra* note 106, at 65-66 (statement of Juanita Kreps). During the 1970s, special restrictions were applicable to India, South Korea, and Taiwan on this ground. *See Senate EAA Hearings Part I, supra* note 106, at 66 (statement of Juanita Kreps). Such controls most often take the form of restrictive licensing policies applicable to items controlled for national security purposes. *See Senate EAA Hearings Part III, supra* note 116, at 16-26 (validated license requirements unilaterally maintained by United States in 1979; no validated license requirements specifically applicable to India, South Korea, or Taiwan); Bingham & Johnson, *A Rational Approach to Export Controls*, 57 FOREIGN AFF. 894, 909-10 (1979), *reprinted in Senate EAA Hearings Part III, supra* note 116, at 44, 59-60 (denial of license to export to Taiwan machinery usable in the fabrication of missiles). Such policies, however, are not set forth in the Regulations.

[118] In June 1967, "precautionary" controls were imposed over the issuance of validated licenses to all states in the Middle East. SECRETARY OF COMMERCE, EXPORT CONTROL, EIGHTY-THIRD QUARTERLY REPORT TO CONGRESS 15 (1968). In 1979, a number of commodities were still said to be controlled for export to all nations in the region, *see Senate EAA Hearings Part I, supra* note 106, at 65-66

(statement of Juanita Kreps); they included aircraft, computers, advanced electronics, and certain vehicles. *See Senate EAA Hearings Part III, supra* note 116, at 41 (statement of Frank Weil). These "controls" have generally constituted strict licensing policies, applicable to items already requiring validated licenses for national security reasons for export to any destination. *See* notes 116-17 *supra*. *Cf. Senate EAA Hearings Part I, supra* note 106, at 223 (statement of Richard Cooper) (explanation of State Department policy on refusing export licenses for regional stability reasons). As of 1980, however, the Regulations do not mention such policies. Validated license requirements are rarely imposed under the regional stability policy. *But see* note 119 *infra*. On the CCL issued as of June 1, 1979, for example, only three ECCN entries required a validated license for export to only Middle Eastern nations, and only one entry required a license for export to Middle Eastern nations but not to any other destinations in Group V. Some of these controls might also be based on the anti-terrorism policy. *See* text accompanying notes 141-69 *infra*. As of 1980, only one validated license requirement—for the export to Libya of certain tractors useful in desert warfare—is identified as based on the regional stability policy. 45 Fed. Reg. 1597 (1980) (to be codified in 15 C.F.R. § 385.4(e)). A licensing policy applicable to this category was established. *Id.*

[119] Probably the best known license denial occurred in May 1978, when the Oshkosh Truck Corporation was advised by the Commerce Department, first, that its proposed export to Libya of 400 heavy duty trucks could not be made without a validated license, and second, that the license had been denied. *See* Bingham & Johnson, *supra* note 117, at 910; Ibrahim, *U.S. Delays Sales Made to Libyans*, N.Y. Times, June 24, 1978, at 25, col. 3. The Commerce Department had apparently confirmed to Oshkosh previously that the export could be made under general license. *Oshkosh Awaits Ruling on Truck Sale to Libya*, AUTOMOTIVE NEWS, June 12, 1978, at 39. The last-minute reversal appears to have been the result of pressure by the State Department and the NSC that in large part grew out of concern expressed by Egypt (Libya's eastern neighbor). Although the trucks were designed to haul oil drilling equipment, they were also capable of towing tanks for use in desert warfare. In spite of pressure by congressmen representing Oshkosh, a license was only issued when lighter trucks were substituted. *See* Bingham & Johnson, *supra* note 117, at 910; *Ibrahim*, *supra*, at 26; AUTOMOTIVE NEWS, *supra* at 39. This action was also motivated by the Administration's anti-terrorism policy, *see* text accompanying notes 141-69 *infra*, which frequently overlaps with regional stability concerns, particularly in the Middle East and in cases involving Libya. *See House EAA Hearings Part I, supra* note 21, at 646 (statement of William Root); *Use of Export Controls and Export Credits for Foreign Policy Purposes: Oversight Hearings on the Increasing Use by the Executive Branch of Restrictions on U.S. Exports and Export Credits for the Purpose of Promoting Foreign Policy Objectives of the Senate Comm. on Banking, Housing and Urban Affairs*, 95th Cong., 2d Sess. 229 (1978) (statement of Sen. Case) [hereinafter cited as *Senate Foreign Policy Hearings*].

Licenses for the export to Libya of certain commercial aircraft—Boeing 727s and 747s and L-100 civilian cargo planes—have also been denied. Hovey, *Ethiopia Sends U.S. Promise on Somalia*, N.Y. Times, Feb. 22, 1978, at 3, col. 1; Ibrahim, *supra*, at 26; Johnson, *U.S. Policies Hamper Exports of C-130*, AV. WEEK, Nov. 13, 1978, at 57; N.Y. Times, March 3, 1979, at 5, col. 6. Mixed concern over regional stability and terrorism has been behind these denials as well. *See generally* Hovey, *supra*; Ibrahim, *supra*. Libya already had nine Boeing 727s, those that were blocked being the last to be delivered out of a single order, and Libya could substitute the European Airbus for the American planes. *See* Ibrahim, *supra*. Boeing's congressional delegation, headed by Senator Henry Jackson, appealed on its behalf and the 727s and 747s were ultimately licensed.

While these restraints were of importance, by the mid-1970s foreign policy controls seemed a peripheral part of the United States export control program. In terms of country coverage,[120] product coverage,[121] and underlying goals,[122] their field of application seemed narrowly defined and stable. Subsequent developments, however, broke sharply with this understanding.

2. *The Access to Supplies Policy*

Congress initiated the first expansion in the meaning of foreign policy under EAA '69 in 1974, following the OPEC oil embargo of the United States. Section 3 of EAA '69 was amended, to declare it to be United States policy to use export controls, within the limits of the section, as a means to secure the removal of restrictions imposed by foreign nations on access to supplies.[123]

The new policy followed from the belief that the President needed additional powers to respond to OPEC-style embar-

---

See id.; N.Y. Times, March 3, 1979, at 5, col. 6. Some of the 727s previously delivered were later found to have been used to airlift troops in support of Idi Amin. Those licensed in 1978 were sold on the basis of assurances of exclusively civilian use and were apparently not used in the Ugandan operation. *See House EAA Hearings Part I, supra* note 21, at 128 (statements of Rep. Pease, Stanley Marcuss); *Extension and Revision of the Export Administration Act of 1969—Part 2, Hearings and Markup Before the House Comm. on Foreign Affairs*, 96th Cong., 1st Sess. 187 (1979) (statement of Robin Schwartzman) [hereinafter cited as *House EAA Hearings Part II*].

[120] Non-Communist nations were subject to foreign policy controls only in such limited circumstances as United Nations sanctions or regional hostilities. By the mid-1970s, even exports to the European Communist states were controlled primarily for national security reasons, *see* note 105 *supra*, although foreign policy had previously played a role in justifying these controls. *See* notes 95, 106 *supra* and accompanying text.

[121] The products controlled under foreign policy authority were usually limited to arms (as in the United Nations embargo of South Africa), materials with nuclear uses, or dual-use items first controlled for national security purposes (as in the case of regional stability controls). The United States attempted to deny a wide range of industrial and consumer goods only to Rhodesia (under United Nations auspices), Cuba, and the Asian Communist nations.

[122] *See* note 108 *supra* and accompanying text.

[123] Export Administration Amendments of 1974, Pub. L. No. 93-500, § 4, 88 Stat. 1552 (codified at 50 U.S.C. app. § 2402(7) (1976)) (expired 1979). An almost identical provision is included in EAA '79. *See* EAA '79, § 3(7), 50 U.S.C. app. § 2402(7) (Supp. III 1979). There is no doubt that the 1973 embargo precipitated congressional action. *See* S. REP. NO. 93-1024, 93d Cong., 2d Sess. 5, *reprinted in* [1974] U.S. CODE CONG. & AD. NEWS 6234, 6238; 120 CONG. REC. 26,055 (1974) (remarks of Sen. Stevenson); *see also* Erb, *Controlling Export Controls*, 17 FOREIGN POL'Y 79, 81-82 (1974).

goes.[124] Without such powers, it was said, the President would be "virtually powerless" to oppose a foreign embargo and the United States would have to "take it lying down."[125] If the United States could respond by cutting off exports, however, it was thought that the President could deter or dismantle foreign embargoes that were "lying in wait for us down the road" by threatening or engaging in "economic warfare."[126] In fact, the amendment was probably not necessary to empower the President to respond to foreign embargoes: retaliatory export controls could have been imposed under the general foreign policy authority of EAA '69,[127] or the President could have called on even broader powers under the Trading with the Enemy Act[128] (particularly in 1974 when the required state of national emergency was in effect).[129] In 1974, however, the use of export controls to respond to foreign trade embargoes was an unfamiliar concept. The new policy declaration may thus have served important functions in clarifying presidential authority and in enunciating congressional support for the use of retaliatory controls.

The access to supplies policy limited presidential authority in three ways. First and most important, it provided that export controls could be used to respond to only two categories of foreign supply restrictions: those having or possibly having serious economic effects (in the form of either inflation or supply shortages), and those imposed to affect the foreign policy of the United States.[130]

The differing operation of these two categories is noteworthy. To come within the first, the foreign supply restriction need only have a sufficient actual or potential economic impact on the United States; motive is immaterial.[131] The foreign nation's purpose may be simply to increase export earnings; indeed the legislative history of the 1974 amendment indicates that mere price increases, if capable of producing the economic effects described in the statute, were restrictions against which the United States might properly retaliate.[132] To fall within the second category, however, no economic effect at all is necessary; the motive of the nation imposing the restriction is all-important. If, for example, South Africa cut off diamond exports to the United States to influence American policy toward continued South African control of Namibia, there might be little economic effect,[133] but because the embargo was intended to affect United States foreign policy, it would trigger the President's authority to retaliate with controls on American exports to South Africa.

---

[124] *See* 120 CONG. REC. 26,055-56 (1974) (remarks of Sen. Stevenson).

[125] *Id.*

[126] *Id.* (remarks of Sen. Stevenson, Sen. Chiles).

[127] Presidential authority would have been buttressed by the antiboycott provisions in EAA '69, which declared opposition to "restrictive trade practices or boycotts" aimed at either friendly nations or at "any United States person." EAA '69, Pub. L. No. 91-184, § 3(5)(A), 83 Stat. 841 (codified at 50 U.S.C. app. § 2402(5)(A) (1976 & Supp. II 1978)) (expired 1979).

[128] 50 U.S.C. app. §§ 1-44 (1976 & Supp. III 1979). *See* note 2 *supra*.

[129] After 1977, the President could have invoked the IEEPA by declaring a national emergency. 50 U.S.C. §§ 1701-1706 (Supp. III 1979). *See* note 2 *supra*.

[130] EAA '69, Pub. L. No. 91-184, § 3, 83 Stat. 841, *as amended by* Export Administration Amendments of 1974, Pub. L. No. 93-500, § 11, 88 Stat. 1552 (codified at 50 U.S.C. app. § 2402(7) (1976)) (expired 1979) (current version at 50 U.S.C. § 2402(7) (Supp. III 1979)).

[131] Some possible motives for imposing restrictions on foreign access to

The grant of authority to retaliate against foreign restrictions intended to affect American foreign policy now appears ironic. It was not long after 1974 that the United States began to use export controls on a significant scale for just the purpose condemned in the statute: attempting to influence the policies of other nations. The irony is heightened by the obvious indignation with which Congress viewed foreign export controls designed to influence United States policy.[134]

The second limitation placed on presidential authority under the access to supplies amendment was the requirement

---

certain commodities are discussed in C. Bergsten, Completing the GATT: Toward New International Rules to Govern Export Controls 4-10 (1974).

[132] *See* 120 Cong. Rec. 26,055-56 (1974) (remarks of Sen. Chiles).

[133] For example, industry could turn to other sources or alternate materials, and fiancees could make do with other gems.

[134] *See* 120 Cong. Rec. 26,055-56 (1974). The same sort of irony is apparent in other contexts as well. The United States legislation aimed at cooperation with the Arab boycott of Israel, EAA '79, § 8, 50 U.S.C. app. § 2407 (Supp. III 1979), for example, loses some of its force as a moral statement when one reads that Congress forbade complicity in only those boycotts the target of which is not the object of any United States boycott. *See generally* Lowenfeld, ". . . *Sauce for the Gander:" The Arab Boycott and United States Political Trade Controls*, 12 Tex. Int'l L.J. 25 (1977).

The irony of the access to supplies policy is evident within the history of the legislation itself. Section 3(7) was added by amendment on the Senate floor, 120 Cong. Rec. 26,056 (1974); the bill reported out of committee, S. 3792, 93d Cong., 2d Sess. (1974), would have added to EAA '69 only a finding and policy declaration opposing restrictions on access to supplies. Although the Committee report spelled out numerous adverse consequences of international supply restrictions, it noted that the Committee expected the President and the Commerce Department to consider those consequences when imposing controls on United States exports, stating that the "serious dangers" presented by unreasonable controls should "play an important role" in their deliberations. S. Rep. No. 93-1024, 93d Cong., 2d Sess 5, *reprinted in* [1974] U.S. Code Cong. & Ad. News 6234, 6238.

that the President make "every reasonable effort" to secure removal of foreign restrictions through international cooperation and agreement before imposing controls.[135] This requirement is sound for several reasons. A foreign supply restriction might be imposed to deal with legitimate domestic economic problems; in such cases negotiations could address those problems or at least mitigate the effects of the supply restriction. Similarly, a restriction imposed to influence United States policy might be lifted if negotiations revealed the possibility of American retaliation or other costs which might be incurred by the foreign nation in maintaining the restriction.[136] In these and similar situations, negotiations might preclude the destructive "economic warfare" that retaliatory controls could produce.

Finally, the amendment provided that retaliatory controls could not apply to medicine or medical supplies.[137] This exemption was a compromise proposed by Senator Weicker who had earlier sought to exempt both medicine and food.[138] Although the United States has traditionally been reluctant to control food exports,[139] the Senate was unwilling to bind the President even to this extent, believing that controls on food exports would be one of the strongest American weapons in a confrontation with an OPEC-style natural resources embargo.[140]

3. *The Anti-Terrorism Policy*

In 1977, Congress again added a new policy declaration to EAA '69, authorizing use of export controls "to encourage other countries to take immediate steps to prevent the use of their territories or resources to aid, encourage, or give sanctuary to" international terrorists (including those who direct and support them).[141]

---

[135] EAA '69, Pub. L. No. 91-184, § 3, 83 Stat. 841, *as amended by* Export Administration Amendments of 1974, Pub. L. No. 93-500, § 11, 88 Stat. 1552 (codified at 50 U.S.C. app. § 2402(7) (1976)) (expired 1979) (current version at 50 U.S.C. § 2402(7) (Supp. III 1979)).

[136] These are among the issues considered in Part IV *infra*.

[137] EAA '69, Pub. L. No. 91-184, § 3, 83 Stat. 841, *as amended by* Export Administration Amendments of 1974, Pub. L. No. 93-500, § 11, 88 Stat. 1552 (codified at 50 U.S.C. app. § 2402(7) (1976) (expired 1979) (current version at 50 U.S.C. app. § 2405(f) (Supp. III 1979)).

[138] 120 CONG. REC. 26,056 (1974) (remarks of Sen. Weicker).

[139] The controls on grain exports to the U.S.S.R. imposed in 1980, *see* text accompanying notes 803-04 *infra*, were in fact the first instance in which the "food weapon" has been used for political purposes. U.S. EXPORT WEEKLY (BNA) No. 289, at A-2 (Jan. 8, 1980). In EAA '79, Congress retained unusual power to overturn controls on food exports. *See* EAA '79, § 7(g)(3), 50 U.S.C. app. § 2406(g)(3) (Supp. III 1979); text accompanying note 784 *infra*.

[140] *See* 120 CONG. REC. 26,056 (1974) (remarks of Sen. Stevenson).

Throughout the 1970s, the United States and other Western governments had grappled with many aspects of international terrorism.[142] The 1977 amendment to EAA '69, which continues unchanged in EAA '79,[143] was designed to deal with only one part of the terrorism problem: the role played by a small group of nations, so-called "subversive centers,"[144] in aiding and harboring terrorists.

The anti-terrorism amendment to EAA '69 was not the first American effort to exert pressure on subversive centers. As early as 1972, following the terrorist attacks at the Munich Olympics,[145] the Senate had adopted a nonbinding resolution that favored "the suspension of United States aid to and the imposition of economic and other sanctions against any nation which provides sanctuary for terrorists."[146] Between 1972 and 1977, Congress took, or authorized the President to take, a number of actions of the kind contemplated by the Senate resolution, principally:

---

[141] Export Administration Amendements of 1977, Pub. L. No. 95-52, § 115, 91 Stat. 235 (codified at 50 U.S.C. app. § 2402(8) (Supp. I 1977)) (expired 1979) (current version at 50 U.S.C. app. § 2402(8) (Supp. III 1979)).

[142] *See, e.g.,* Joint Statement, 14 Weekly Comp. of Pres. Doc. 1308-10 (July 17, 1978). Considerable debate on the proper response to terrorism has taken place internationally, though few agreements have been reached. *See* Browne, *Terrorism,* in The U.S. Role in a Changing World Political Economy: Major Issues for the 96th Congress 2344-35 (M. Lowenthal & R. Kaufman eds. 1979). The International Civil Aviation Organization has adopted three treaties aimed at protection of civil aviation, all of which the United States has ratified. *Id*. at 231, 237. The Organization of American States adopted a convention in 1971 aimed at "Acts of Terrorism Taking the Form of Crimes Against Persons," and the United States ratified this treaty in 1976. *Id*., at 231. In 1973, the United Nations adopted a treaty aimed at "Crimes Against Internationally Protected Persons," such as diplomats, which the United States has also ratified. *Id*. at 233, 237. Numerous actions to promote the safety of civil aviation have been taken in the United States. *See id*. Responsibility for coordinating efforts to combat terrorist activities rests with the Special Coordination Committee of the National Security Council. An interagency executive committee under this committee meets regularly to consider anti-terrorism measures, and a military unit trained to deal with terrorist incidents has been created. *Id*. at 235, 236. In Congress, extensive hearings on the problem have been held. *See id*. at 240 (bibliography of congressional documents).

[143] *See* EAA '79, § 3(8), 50 U.S.C. app. § 2402(8) (Supp. III 1979).

[144] *See* Murphy, *State Self-Help and Problems of Public International Law*, in Legal Aspects of International Terrorism, 553, 563-65 (A. Evans & J. Murphy eds. 1978). In July 1976, the New York Times reported that Libya was training, arming, and financing "[a] broad terrorist network, stretching from the Middle East to Africa and Europe," and described its operation in some detail. N.Y. Times, July 16, 1976, at 1, col. 1. In 1977, the State Department, responding to an information request from Senator Javits, publicly stated that Libya had "actively assisted" terrorist groups and individuals since at least 1972. See N.Y. Times, May 9, 1977, at 4, col. 3. The correspondence is reprinted in *International Terrorism: Hearing Before the Subcomm. on Foreign Assistance of the Senate Comm. on Foreign Relations*, 95th Cong., 1st Sess. 2-5 (1977) (statement of Sen. Javits) [hereinafter cited as *International Terrorism Hearings*]. The Department also named Iraq, South Yemen, and Somalia, *id*. at 3-4, though Somalia was later removed from its list. *See* S. Rep. No. 95-908, 95th Cong., 2d Sess. 18 (1978) [hereinafter cited as S. Rep. No. 95-908]. Depending on one's definition, other governments can be said to support terrorist activities at least occasionally. *See* Murphy, *supra*, at 563. The question of definition may become a major issue under the Reagan Administration. *See* note 813 *infra* and accompanying text.

—The 1974 Antihijacking Act,[147] empowering the President to suspend civil air service to nations aiding or harboring terrorists and to third countries that continue to fly to such nations;[148]

—The 1976 Wolff Amendment to the Foreign Assistance Act,[149] requiring the President to terminate economic and military assistance to any nation that aids or abets an international terrorist by granting sanctuary, except when the President finds that national security requires a continuation of aid;[150]

—A 1976 amendment to the Generalized System of Preferences legislation,[151] providing that no nation that grants sanctuary to international terrorists may be designated a beneficiary of preferences unless—like other limitations on beneficiary status—the restriction is waived by the President in the "national economic interest;"[152]

—A 1977 statute supplementing the Arms Export Control Act with the language of the Wolff Amendment, thereby requiring termination of arms sales to countries harboring terrorists, again subject to presidential waiver in the interest of national security;[153] and

---

[145] This event brought about a major increase in anti-terrorism activity in the United States. *See* Browne, *supra* note 142, at 231.

[146] S. Con. Res. 100, 92d Cong., 2d Sess., 118 CONG. REC. 32,651 (1972) [hereinafter cited as S. Con. Res. 100].

[147] Antihijacking Act of 1974, Pub. L. No. 93-366, tit. I, 88 Stat. 409 (codified at 49 U.S.C. §§ 1514-1515 (1976).

[148] 49 U.S.C. § 1514 (1976). The United States may also revoke or limit the rights of air carriers of nations that do not meet ICAO minimum standards for airport security. *Id.* at § 1515. None of these sanctions has been implemented. *See* Browne, *supra* note 142, at 237-38.

[149] International Security Assistance and Arms Export Control Act of 1976, Pub. L. No. 94-329, § 303, 90 Stat. 729 (codified at 22 U.S.C. § 2371 (1976)). *See also* Foreign Assistance and Related Programs Appropriations Act of 1978, Pub. L. No. 95-148, § 509, 91 Stat. 1230 (1977); Foreign Assistance and Related Programs Appropriations Act of 1979, Pub. L. No. 95-481, § 607, 92 Stat. 1591 (1978).

[150] 22 U.S.C. § 2371(a) (1976).

[151] Tax Reform Act of 1976, International Trade Amendments, Pub. L. No. 94-455, tit. XVIII, § 1802, 90 Stat. 1962 (codified at 19 U.S.C. § 2462(b)(7) (1976)).

[152] 19 U.S.C. § 2462(b) (1976).

—A 1977 provision directing the executive branch to use its "voice and vote" in the several international financial institutions[154] to channel assistance away from countries whose governments provide refuge to international airline hijackers.

By 1977, then, Congress had injected the issue of assistance to terrorists into many facets of American foreign policy, and it has continued to do so in subsequent legislation resembling that outlined above.[155] Further measures have been extensively debated, but not yet enacted.[156]

Most of the measures adopted prior to 1977 were seen as ineffective because of limited American contact with terrorist-supporting states.[157] The United States has no air transport agreement with either Libya or Iraq, for example, and neither country receives American aid.[158] At best, most measures were regarded as politically symbolic.[159] Export controls, however, were thought to have some potential for influencing the subversive centers largely because they could prevent sales of commercial aircraft, a product that was sought in large numbers by many nations known to assist terrorists,[160] was believed to have a logical connection with international terrorism,[161] and was supplied mainly by United States companies.[162]

---

[153] International Security Assistance Act of 1977, Pub. L. No. 95-92, § 18, 91 Stat. 614 (codified at 22 U.S.C. § 2753(f)(1) (Supp. III 1979)).

[154] International Bank for Reconstruction and Development Act of 1977, Pub. L. No. 95-118, § 701(a), 91 Stat. 1067 (codified at 22 U.S.C. § 262d(a) (Supp. III 1979)). The wording of the legislation suggests that opposition to assisting terrorists was seen as part of the broader human rights policy, described below. *See id.* Aircraft hijacking is the only activity covered by the statute. *Id.* at § 701(a)(2).

[155] Congress directed the United States Executive Director of the International Monetary Fund (IMF) to "work in opposition" to the extension of IMF assistance to any government that "supports, encourages or harbors" terrorists or fails to take "appropriate measures" to prevent acts of terrorism. Bretton Woods Agreements Act Amendments, Pub. L. No. 95-435, § 6, 92 Stat. 1051 (1978) (codified at 22 U.S.C. § 286e-11 (Supp. III 1979)). Congress also permitted support of terrorism to be considered in decisions on Export-Import Bank financing. Financial Institutions Regulatory and Interest Rate Control Act of 1978, Pub. L. No. 95-630, § 1904, 92 Stat. 3641 (codified at 12 U.S.C. § 635(b)(1)(B) (Supp. III 1979)).

[156] *See* Browne, *supra* note 142, at 239. As of 1980, major anti-terrorism bills were before both houses. *See generally* S. 333, 96th Cong., 2d Sess. (1980); H.R. 2441, 96th Cong., 2d Sess. (1980).

[157] *See, e.g.,* Murphy, *supra* note 144, at 566.

[158] *See International Terrorism Hearings, supra* note 144, at 8 (statement of Sen. Heinz).

[159] *See* Lillich & Carbonneau, *The 1976 Terrorism Amendment to the Foreign Assistance Act of 1961*, 11 J. INT'L L. & ECON. 223, 226 (1977). Lillich and Carbonneau believe that such legislative enactments contribute to the development of a norm of international law condemning terrorism. *Id.* at 235.

[160] Libya, in particular, had ordered many aircraft from the United States. *See* note 119 *supra.*

Oddly, the legislative history of the 1977 amendments to EAA '69 is virtually silent on the anti-terrorism policy.[163] Nevertheless, the adopted policy authorized use of export controls to combat a broader range of conduct than had any of the prior legislation directed at subversive centers: all forms of assistance (not merely sanctuary) given to any persons involved (not just active participants) in any form of terrorism (not simply hijacking).[164]

Like the 1974 policy on access to supplies, the anti-terrorism provision directed the President, before resorting to export controls, to "make every reasonable effort" to discourage assistance to terrorists through "international cooperation and agreement."[165] The President apparently determined almost immediately, and probably correctly, that in some cases exhaustion of these remedies would be futile, for exports of aircraft and other controlled items to subversive centers were restricted in succeeding years.[166] In May 1980, every item on

---

[161] *See International Terrorism Hearings*, *supra* note 144, at 9 (statement of Sen. Heinz).

[162] According to the former President of the Export-Import Bank, the United States is the "dominant producer" of short-range aircraft and long-range, wide-bodied aircraft, although there is strong competition from Europe for sales of mid-range, wide-bodied aircraft. *Oversight Hearing on the Export-Import Bank: Hearing Before the Subcomm. on Int'l Trade, Investment and Monetary Policy of the House Comm. on Banking, Finance and Urban Affairs*, 96th Cong., 1st Sess. 3-4 (1979) (statement of John L. Moore).

[163] The House report simply mentions the policy and gives no reason for its inclusion and no assessment of its probable effectiveness. *See* H.R. REP. NO. 95-190, 95th Cong., 1st Sess., *reprinted in* [1977] U.S. CODE CONG. & AD. NEWS 362, 380. The conference report does not mention the policy at all. *See* H. CONF. REP. NO. 95-354, 95th Cong., 1st Sess., *reprinted in* [1977] U.S. CODE CONG. & AD. NEWS 401.

[164] Export Administration Amendments of 1974, Pub. L. No. 95-52, § 115, 91 Stat. 285 (amending EAA '69, Pub. L. No. 91-184, § 3, 83 Stat. 841) (codified at 50 U.S.C. app. § 2402(8) (Supp. I 1977)) (expired 1979) (current version at 50 U.S.C. app. § 2402(8) (Supp. III 1979)).

[165] *Id.*

[166] The principal targets of anti-terrorism controls have been the three subversive centers identified in 1977. Most prominent has been Libya. *See* S. REP. NO. 95-908, 95th Cong., 2d Sess. 23 (1978); *An Act to Combat International Terrorism: Hearings Before the Senate Comm. on Governmental Affairs*, 95th Cong., 2d Sess. 11 (1978) (statement of Cyrus Vance); Ibrahim, *supra* note 119, at 25, col. 3. The others have been Iraq and South Yemen. *See Senate EAA Hearings Part III, supra* note 116, at 41 (statement of Frank Weil). Since 1980 anti-terrorism controls also have applied to Syria. *See* 45 Fed. Reg. 1595 (1980) (to be codified in 15 C.F.R. § 385.4).

Commerce has provided little information about the items subject to control under the anti-terrorism policy, using such phrases as "equipment particuthe CCL already controlled for national security purposes for export to Libya, Iraq, South Yemen, or Syria[167] was made subject to concurrent foreign policy controls for export (in transactions of $7 million or more) to military purchasers in those countries.[168] Thus, the State Department now has express authority to review most substantial exports of dual-use items to subversive centers under the anti-terrorism policy.[169]

---

larly useful in abetting terrorism." *Senate EAA Hearings Part III, supra* note 116, at 41 (statement of Frank Weil). It is clear, though, that the controls have consisted primarily of restrictions on licenses for items already controlled for national security purposes, since extensive validated license controls were not imposed under the policy. As of mid-1979, only four ECCN entries on the CCL specifically required validated licenses for exports to the known terrorist-supporting states; in some cases these requirements also applied to other Middle East nations and were probably motivated in part by the regional stability policy. *See* note 118 *supra*. When foreign policy export controls were extended beyond 1979, *see* note 778 *infra*, only two groups of items were said to be under validated license control for anti-terrorism purposes: crime detection equipment, which was already subject to control under the human rights policy, *see* text accompanying note 200 *infra*; and certain aircraft, some of which were multilaterally controlled to all destinations. A statement of licensing policy applicable to these items was adopted at the same time, but it merely referred to the anti-terrorism policy in § 3 of EAA '79. *See* 45 Fed. Reg. 1595 (1980) (to be codified in 15 C.F.R. § 385.4(d)).

[167] This includes most items on the CCL, because most national security controls apply to exports to all destinations.

[168] 45 Fed. Reg. 33,956 (1980) (to be codified in 15 C.F.R. § 385.4(d)). The new controls were prompted by a notification requirement in EAA '79. *See* note 169 *infra*.

[169] In fact, the Commerce and State Departments have for years reviewed exports of items controlled for national security reasons under the anti-terrorism policy as well. The Oshkosh Truck case and the denials of licenses for aircraft exports to Libya, *see* note 119 *supra*, were explicitly linked to the anti-terrorism policy as well as to considerations of regional stability. *See* Ibrahim, *supra* note 119, at 25, col. 3; N.Y. Times, Feb. 22, 1978, at 3, col. 2. No statement of licensing policy applicable to the range of items on the CCL has been included in the Regulations, however. Regional stability and anti-terrorism controls frequently seem almost interchangeable, in large part because both have focused on the Middle East, where the support of Libya and others for extreme elements in the Palestine Liberation Organization involves them in a major regional conflict. *See* S. REP. NO. 95-908, *supra* note 144, at 18-20.

EAA '79 requires the Secretaries of State and Commerce to notify certain committees of Congress before approving any license for the export of goods or technology valued at over $7 million, when the purchasing country has been determined by the State Department to have repeatedly provided support for acts of terrorism and when the goods or information to be exported would make a significant contribution to its military (including logistical) capability or would enhance its ability to support international terrorism. EAA '79, § 6(i), 50 U.S.C. app. § 2405(i) (Supp. III 1979). This provision reflects the continuing interrelationship between the anti-terrorism and regional stability policies. Recently, proposed exports of aircraft and marine engines to Iraq, favored by the Carter Administration but strongly opposed by some members of Congress, led to controversy over compliance with the new notification provision. *See* U.S. EXPORT WEEKLY (BNA) No. 309, at A-1 to A-2 (May 27, 1980); *id.* No. 313, at A-1, A-3 to

4. *The Human Rights Policy*

More important to the expansion of foreign policy export controls than either of the policies added to EAA '69 was the emergence of concern for the promotion of "internationally recognized human rights" as an integral part of American foreign policy[170]—a development never explicitly incorporated in the Act. Although this Article will attempt neither to discuss the many difficult and divisive issues raised by the American human rights policy[171] nor to render a complete history of the policy, an outline of the major developments is essential.

Intense American involvement with international human rights can be said to date from 1973,[172] when a House subcommittee chaired by Representative Donald Fraser of Minnesota initiated hearings that produced extensive evidence of torture[173] and other "rampant violations of human rights" around the world.[174] The subcommittee concluded that American foreign policy had accorded little importance to opposing such conduct and strongly criticized the Nixon Administration for embracing governments that had "unabashedly violate[d] al-

---

A-5 (June 24, 1980). The Senate voted to revoke the license for marine engines granted by Commerce. *See* note 855 *infra*.

[170] On the development of the human rights policy, *see generally Human Rights and U.S. Foreign Policy: A Review of the Administration's Record, Hearings Before the Subcomm. on International Organizations of the House Comm. on International Relations*, 95th Cong., 1st Sess. (1977) [hereinafter cited as *Human Rights Hearings*] (especially CONGRESSIONAL RESEARCH SERVICE, ISSUE BRIEF NO. 77056, *reprinted in id.*, at 47-73); Bite, *U.S. Human Rights Policy*, in THE U.S. ROLE IN A CHANGING WORLD POLITICAL ECONOMY: MAJOR ISSUES FOR THE 96TH CONGRESS 192 (M. Lowenthel & R. Kaufman eds. 1979); Vogelgesang, *What Price Principle? U.S. Policy on Human Rights*, 56 FOREIGN AFF. 819 (1978); Weissbrodt, *Human Rights Legislation and U.S. Foreign Policy*, 7 GA. J. INT'L & COMP. L. 231 (1977).

[171] Among the issues often discussed are the following: What are internationally recognized human rights? What order of priority should American policy assign to various rights? What is the morality of attempting to change the social practices of other cultures? Do efforts to do so violate international law? These issues are discussed at length elsewhere. In addition to sources cited in note 170 *supra*, *see generally* R. LILLICH & F. NEWMAN, INTERNATIONAL HUMAN RIGHTS (1979); *Symposium—Human Rights and U.S. Foreign Policy*, 8 DEN. J. INT'L L. & POL. 517 (1979); *Symposium—Human Rights, The National Interest, And U.S. Foreign Policy: Some Preliminary Observations*, 14 VA. J. INT'L L. 597 (1974).

[172] *Human Rights Hearings, supra* note 170, at 55. The United States has of course had a history of involvement in issues that would now be considered part of a "human rights" policy. *See* Weissbrodt, *supra* note 170, at 232-34.

[173] *See also* AMNESTY INTERNATIONAL, REPORT ON TORTURE (1973).

[174] SUBCOMM. ON INT'L ORGANIZATIONS AND MOVEMENTS OF THE HOUSE COMM. ON FOREIGN AFFAIRS, 93RD CONG., 2D SESS., HUMAN RIGHTS IN THE WORLD COMMUNITY: A CALL FOR U.S. LEADERSHIP 1 (Comm. Print 1974) [hereinafter cited as FRASER REPORT]. *See* Weissbrodt, *supra* note 170, at 238-39.

most every human rights guarantee pronounced by the overall world community."[175] The subcommittee's general recommendation was clear from the title of its 1974 report: *Human Rights in the World Community: A Call for U.S. Leadership*.[176] The subcommittee also issued numerous specific recommendations for action by both the executive branch and Congress.[177]

While the Republican Administration acted on some of these recommendations,[178] the subcommittee's most significant product was a stream of legislation injecting the human rights issue into many facets of foreign policy.[179] The bulk of these enactments have affected American foreign assistance programs, a policy area in which Congress is particularly active due to the need for frequent appropriations. Initially, a "sense of Congress" provision urged the President to deny economic and military aid to foreign governments that practiced "internment or imprisonment of [their] citizens for political purposes."[180] Building on this modest foundation, subsequent legislation now requires the executive branch to consider the human rights practices of recipient countries in decisions on virtually all forms of foreign assistance—including security assistance,[181] economic assistance,[182] concessional food sales,[183] and American aid through international financial institutions.[184] Such considerations also must be taken into account

---

[175] FRASER REPORT, *supra* note 174, at 9; *see* Weissbrodt, *supra* note 170, at 239-40.

[176] *See generally* FRASER REPORT, *supra* note 174. The work of the subcommittee, by initiating widespread official involvement in international human rights, has been regarded as "herald[ing] a new era in United States foreign policy." Weissbrodt, *supra* note 170, at 239; *cf.* Buergenthal, *International Human Rights: U.S. Policy and Priorities*, 14 VA. J. INT'L L. 611, 611 (1974) (Fraser Committee provided long overdue opportunity to review American foreign policy in regard to human rights).

[177] *See* Bite, *supra* note 170, at 205; Salzberg & Young, *The Parliamentary Role in Implementing International Human Rights: A U.S. Example*, 12 TEX. INT'L L.J. 251, 253-56 (1977).

[178] For example, the State Department appointed a Coordinator for Humanitarian Affairs and other officers with human rights responsibilities. *Human Rights Hearings*, *supra* note 170, at 55-56; Weissbrodt, *supra* note 170, at 240 n.35. Congress mandated this position in 1976, International Security Assistance and Arms Export Control Act of 1976, Pub. L. No. 94-329, § 301(b), 90 Stat. 729, and later required the Coordinator to be placed at the Assistant Secretary level, Foreign Relations Authorization Act: Fiscal Year 1978, Pub. L. No. 95-105, § 109(a)(1), 91 Stat. 844 (codified at 22 U.S.C. § 2384(f) (Supp. III 1979)).

[179] *See* Salzberg & Young, *supra* note 177, at 269-78; Weissbrodt, *supra* note 170, at 241-78.

[180] Foreign Assistance Act of 1973, Pub. L. No. 93-189, § 32, 87 Stat. 714 (1973).

[181] In 1974, Congress added § 502B to the Foreign Assistance Act of 1961, Foreign Assistance Act of 1974, Pub. L. No. 93-559, § 46, 88 Stat. 1795 (1974) (codified at 22 U.S.C. § 2304 (1976)) (amended 1976, 1977, 1978, 1979). Section 502B was originally a "sense of Congress" provision stating that the President should, except in "extraordinary circumstances," reduce or terminate security

---

assistance to any government "which engages in a consistent pattern of gross violations of internationally recognized human rights." *See* Weissbrodt, *supra* note 170, at 257 n.94. Without actually defining the term, § 502B gave examples of conduct constituting a "gross violation," including "torture or cruel, inhuman or degrading treatment or punishment; prolonged detention without charges; or other flagrant denials of the right to life, liberty and the security of the person." 22 U.S.C. § 2304 (1976 & Supp. III 1980) (amended 1976, 1977, 1978, 1979). Section 502B was made binding on the President in 1976, and the exception for "extraordinary circumstances" was repealed. International Security Assistance and Arms Export Control Act of 1976, Pub. L. No. 94-329, § 301, 90 Stat. 729 (amending 22 U.S.C. § 2304).

In 1978, § 502B was amended to prohibit security assistance to the police, domestic intelligence, or other law enforcement forces of a government which is a violator of human rights within the meaning of the section, except upon presidential certification of extraordinary circumstances. International Security Assistance Act of 1978, Pub. L. No. 95-384, § 6(d)(1), 92 Stat. 730 (codified at 22 U.S.C. § 2304(a)(2) (Supp. III 1979)).

A somewhat different thrust can be seen in two 1979 amendments to § 502B, which (1) permit the President to terminate a prohibition on security assistance, in the national interest, in light of significant improvements in human rights practices, International Development Cooperation Act of 1979, Pub. L. No. 96-53, § 511, 93 Stat. 359 (1979) (codified at 22 U.S.C. § 2304(e) (Supp. III 1979)); and (2) permit him to take such improvements into account in allocating security assistance and financing for arms purchases. International Security Assistance Act of 1979, Pub. L. No. 96-92, § 4, 93 Stat. 701 (1979) (codified at 22 U.S.C. § 2304(f) (Supp. III 1979)).

[182] In enacting the International Development and Food Assistance Act of 1975, Congress added § 116 to the Foreign Assistance Act. International Development and Food Assistance Act of 1975, Pub. L. No. 94-161, § 310, 89 Stat. 849 (codified at 22 U.S.C. § 2151n (1976)). Section 116, always a binding enactment, prohibits the granting of economic aid to any country which falls within the definition of a violator of human rights included in § 502B. *See* note 181 *supra*. Aid may, however, be provided to a violator of human rights if it will "directly benefit the needy people" in the recipient country. 22 U.S.C. § 2151n (1976). The foreign affairs committee of either house of Congress can require the Agency for International Development to justify any continuation of aid under the exception. *Id*. Either committee, or either house, may initiate a procedure by which Congress can overrule a grant of aid by concurrent resolution. *Id*. at § 2367 (1976).

[183] The International Development and Food Assistance Act of 1977, Pub. L. No. 95-88, § 203, 91 Stat. 533 (codified at 7 U.S.C. § 1712 (Supp. III 1979)), prohibits the sale of agricultural products under Title I of P.L. 480 to any government engaging in a consistent pattern of human rights violations, except where the sale would benefit needy people.

[184] The International Bank for Reconstruction and Development Act of 1977, Pub. L. No. 95-118, § 701, 91 Stat. 1067 (codified at 22 U.S.C. § 262d (Supp. III 1979)), directs American representatives to the international financial institutions to "advance the cause of human rights" through the use of the "voice and vote" of the United States, and specifically, to channel aid to countries which do not engage in a consistent pattern of gross violations of internationally recognized human rights and to oppose aid to countries which do, unless the aid would serve the "basic human needs" of their citizens. As passed, the Act is a compromise between the original House bill, which required a negative vote on loans to human rights violators, and the Administration's desire for

in the operations of both the Export-Import Bank[185] and the Overseas Private Investment Corporation.[186] Congress has in addition restricted aid to specific nations as a result of their human rights practices[187] and has required the executive branch to prepare extensive public reports on human rights conditions around the world.[188]

In a 1976 amendment to the Foreign Assistance Act, Con-

---

flexibility. *See Human Rights Hearings, supra* note 170, at 58-59; *see also* Foreign Assistance and Related Programs Appropriations Act of 1978, Pub. L. No. 95-148, § 507, 91 Stat. 1230 (codified at 22 U.S.C. § 262d-1 (Supp. III 1979)) (employing similar language).

The United States representatives to the financial institutions are also directed to seek adoption of charter amendments that would establish human rights criteria for evaluating applications for assistance. Foreign Assistance and Related Programs Appropriations Act of 1979, Pub. L. No. 95-481, § 611, 92 Stat. 1591 (1978) (codified at 22 U.S.C. § 262d note (Supp. III 1979)). *See generally* HOUSE COMM. ON APPROPRIATIONS, SURVEYS AND INVESTIGATIONS REPORT (1979), *reprinted in Foreign Assistance and Related Programs Appropriations for 1980—Part 2—International Financial Institutions: Hearings Before the Subcomm. on Foreign Operations and Related Agencies of the House Comm. on Appropriations*, 96th Cong. 1st Sess. 19-20, 173-85 (1979) [hereinafter cited as *International Financial Institutions Hearings*]. The agencies involved are the International Bank for Reconstruction and Development (the World Bank); the International Development Association; the International Finance Corporation; the Inter-American Development Bank; the African Development Fund; and the Asian Development Bank.

A less rigorous human rights statute applies to the International Monetary Fund: the Secretary of the Treasury, in consultation with the Secretary of State, must merely report yearly on the status of international human rights within each nation which draws on the IMF Supplementary Financing Facility (Witteveen Facility). Bretton Woods Agreement Amendments Act, Pub. L. No. 95-435, § 4, 92 Stat. 1051 (1978) (codified at 22 U.S.C. § 286e-10 (Supp. III 1979)).

[185] *See* Financial Institutions Regulatory and Interest Rate Control Act of 1978, Pub. L. No. 95-630, § 1904, 92 Stat. 3641 (codified at 12 U.S.C. § 635(b)(1)(B) (Supp. III 1979)).

[186] The Overseas Private Investment Corporation Amendments Act of 1978, Pub. L. No. 95-268, § 8, 92 Stat. 213 (codified at 22 U.S.C. § 2199(e) (Supp. III 1979)), applies the standards of § 116, subject to a national security exception, to activities of the Overseas Private Investment Corporation, which provides financing and insurance for investments in developing nations.

[187] For example, the Foreign Assistance and Related Programs Appropriations Act, Pub. L. No. 95-148, tit. I, §§ 107, 114, 91 Stat. 1230 (1977) (expired 1978), prohibited aid to Uganda, Vietnam, Cambodia, Laos, Angola, and Mozambique. Other sections of the Act prohibited or limited certain forms of military aid to Ethiopia, Uruguay, Argentina, Brazil, El Salvador, Guatemala, and the Philippines. *Id.* at tit. V, §§ 503A-503B (1977) (expired 1978).

[188] Section 116 of the Foreign Assistance Act, 22 U.S.C. § 2151n (1976) (amended 1979), required annual reports on human rights in nations receiving economic aid. The 1976 revision of § 502B of the Act required both annual and special reports on nations receiving military aid. 22 U.S.C. § 2304 (1976) (amended 1978, 1979). In 1979, § 116(d) was amended to require State Department reports on human rights in all nations which are members of the United Nations, whether or not they receive any aid. International Development Cooperation Act of 1979, Pub. L. No. 96-53, § 504(a), 93 Stat. 359 (to be codified at 22 U.S.C. § 2151n(d)).

gress explicitly established the promotion of international human rights as an essential component of United States foreign policy. Congress declared that, in accordance with American obligations under the United Nations Charter and in keeping with American traditions and constitutional heritage, "a principal goal of the foreign policy of the United States is to promote the increased observance of internationally recognized human rights by all countries."[189] This declaration may have been the most significant provision in the human rights legislation of the 1970s in that it transcended individual assistance programs to provide direction for the whole of American foreign policy.[190] It was without doubt the most significant in terms of its effect on export controls. By requiring that the promotion of human rights be considered a major part of "the foreign policy of the United States," perhaps even one of its "international responsibilities,"[191] the 1976 declaration had the same effect as an amendment of EAA '69 itself—it expanded the purposes for which foreign policy export controls were explicitly authorized.

Much of the impetus for the steady enactment of human rights legislation prior to 1977 came from the perceived unwillingness of the Republican Administration to pursue human rights issues.[192] The Carter Administration, however, had a markedly different attitude toward human rights. President Carter had campaigned on his intention to include human rights considerations in foreign policy[193] and came into office with a "clear commitment" to an active international human rights policy.[194] In his inaugural address[195] and his March 1977 speech to the United Nations General Assembly,[196] President Carter reiterated his Administration's commitment to international human rights as a central tenet of American foreign policy. State Department officials likewise stated their dedication to the promotion of human rights.[197] In 1977 and 1978, diplomatic initiatives and other actions aimed at promoting human rights became common.[198] The actions encompassed not only important symbolic gestures,[199] but more tangible measures as well; limitations on aid, arms transfers, and concessional food sales, among other measures, were imposed against nations that had violated human rights.[200]

---

[189] International Security Assistance and Arms Export Control Act of 1976, Pub. L. No. 94-329, § 301, 90 Stat. 729 (amending 22 U.S.C. § 2304) (amended 1978, 1979).

[190] *Foreign Assistance and Related Programs Appropriations, Fiscal Year 1980—Part I: Hearings Before the Subcomm. on Foreign Assistance of the Senate Comm. on Appropriations*, 96th Cong., 1st Sess. 728 (1979) (statement of Patricia Derian, Assistant Secretary of State for Human Rights and Humanitarian Affairs); *see* Weissbrodt, *supra* note 170, at 251.

[191] EAA '69, Pub. L. No. 91-184, § 3(2)(B), 83 Stat. 841 (codified at 50 U.S.C. app. § 2402(2)(B) (1976)) (expired 1979). EAA '79 replaced the word "responsibilities" with "obligations." EAA '79, § 3(2)(B), 50 U.S.C. app. § 2402(2)(B) (Supp. III 1979).

[192] *See* Weissbrodt, *supra* note 170, at 241 n.39, 244 n.49.

[193] *See id*. at 231 nn. 1 & 2.

[194] *Human Rights Hearings, supra* note 170, at 57.

[195] Inaugural Address of President Jimmy Carter, 13 WEEKLY COMP. OF PRES. DOC. 87, 88 (1977).

In such an atmosphere, it was perhaps inevitable that export controls would be identified as another potential policy tool, and the human rights policy became the basis for some of the most controversial export controls of the 1970s. The specific controls described below illustrate the Carter Administration's use of export controls in pursuit of international human rights.

B. FOREIGN POLICY EXPORT CONTROLS, 1977-1978

A number of widely publicized and controversial foreign policy export controls, involving validated license requirements, restrictive licensing policies, and denials of individual licenses, were imposed during 1977 and 1978.[201] The controls described in this section were based largely on the human rights policy embraced by the Carter Administration. It was these actions to which Congress was reacting when it adopted the foreign policy sections of EAA '79; they thus form part of the legislative history of EAA '79 and should be understood before considering the legislation itself. These incidents can also serve to illustrate the more general discussion of export controls as a tool of foreign policy in Part IV. With the illustrative function in mind, this section of the Article first examines the 1978 embargo on trade with Uganda, imposed not by the President, but by Congress.

---

[196] The President's Address to the General Assembly, 13 WEEKLY COMP. OF PRES. DOC. 397, 401 (1977).

[197] *See, e.g., Human Rights Hearings, supra* note 170, at 2-7 (statement of Mark L. Schneider, Deputy Assistant Secretary of State for Human Rights); Vance, *Human Rights and Foreign Policy*, 7 GA. J. INT'L & COMP. L. 223 (1977) (Law Day Address).

[198] *See Human Rights Hearings*, *supra* note 170, at 4-5; Vogelgesang, *supra* note 170, at 822-26; Weissbrodt, *supra* note 170, at 278-79.

[199] *See Human Rights Hearings, supra* note 170, at 57.

[200] *See id.*, at 4-5, 8-9, 10-11, 39, 57-58; *International Financial Institutions Hearings, supra* note 184, at 180-83; DEPARTMENT OF STATE, REPORT ON HUMAN RIGHTS PRACTICES IN COUNTRIES RECEIVING U.S. AID: REPORT SUBMITTED TO THE SEN. COMM. ON FOREIGN RELATIONS AND THE HOUSE COMM. ON FOREIGN AFFAIRS, 96th Cong., 1st Sess. 6 (1979) [hereinafter cited as REPORT ON HUMAN RIGHTS PRACTICES]; Vogelgesang, *supra* note 170, at 826.

For a description of the institutional structures that weigh human rights considerations in administrative decisionmaking, see Note, *United States Human Rights Policy: Effect on Exports*, 9 GA. J. INT'L & COMP. L. 287, 307-11 (1979).

[201] The descriptions of validated license controls and licensing policies are based primarily on official documents, regulations, and other statements of the relevant executive departments or Congress. Descriptions of license denials—and to some extent the other controls as well—are of necessity based on testimony in congressional hearings and on press reports.

1. *Uganda: A Foreign Policy Embargo*

The bizarre history of the reign of Idi Amin in Uganda is well known. From his rise to power in 1971, Amin subjected the country to a "reign of terror"[202] perhaps unique in recent history,[203] involving an unfathomable series of human rights violations.[204]

Between 1971 and 1978 the United States took a number of steps to "distance" itself from Amin:[205] the American Embassy in Uganda was closed,[206] American officials vigorously spoke out against Amin,[207] economic and military assistance was terminated,[208] the Export-Import Bank and the Overseas Private

---

[202] *Uganda: The Human Rights Situation: Hearings Before the Subcomm. on Foreign Economic Policy of the Senate Comm. on Foreign Relations*, 95th Cong., 2d Sess. 10, 11 (1978) (statement of Michael Posner) [hereinafter cited as *Uganda Hearings*]. Mr. Posner's statement summarizes the major incidents of human rights violations from 1971 through June 1978.

[203] Ullman, *Human Rights and Economic Power: The United States Versus Idi Amin*, 56 FOREIGN AFF. 528, 530 (1978). Only the recent events in Cambodia seem to approach the devastation of those in Uganda, and in Congress the two situations were often compared. *See, e.g.*, Foreign Relations Authorization Act of 1978, Pub. L. No. 95-426, § 610(a), 92 Stat. 963, *reprinted in* 22 U.S.C. § 2151 note (Supp. III 1979)) (congressional finding that governmental practices in the two countries involve "such systematic and extensive brutality" as to require condemnation). The United States was believed to have more potential influence over Uganda, however. *See* note 221 *infra*.

[204] *See Uganda Hearings, supra* note 202, at 11-15 (statement of Michael Posner); *id.* at 96-98 (statement of Thomas Melady); *see generally* AMNESTY INTERNATIONAL, HUMAN RIGHTS IN UGANDA (1978); T. MELADY & M. MELADY, IDI AMIN DADA: HITLER IN AFRICA (1977); T. MELADY & M. MELADY, UGANDA: THE ASIAN EXILES (1976). Thomas Melady was formerly United States Ambassador to Uganda.

[205] *See Uganda Hearings, supra* note 202, at 126-28 (statement of William Harrop). *See* Note, *Recent Development, International Trade: Uganda Trade Embargo*, 20 HARV. INT'L L.J. 206, 208 (1979).

[206] *Uganda Hearings, supra* note 202, at 127 (statement of William Harrop).

[207] *Id.* at 126.

[208] International Development and Food Assistance Act of 1978, Pub. L.

Investment Corporation ceased financing Ugandan transactions,[209] imports from Uganda were excluded from the Generalized System of Preferences,[210] and American representatives to international lending institutions voted against loans to Uganda.[211]

There were few direct controls on trade with Uganda prior to 1978, however, despite Congressional pressure.[212] Exports of arms were prohibited, and commercial exports of items already subject to validated license requirements were reviewed by the State Department.[213] The Department recommended that licenses for exports that could contribute directly to human rights violations be denied,[214] but exports that would not assist the Ugandan government or military were approved.[215] State Department review was limited, furthermore, to exports of those high technology items controlled for national security purposes and a few other products controlled under the human rights policy.[216] All other commercial exports, and all imports,

---

No. 95-424, § 602, 92 Stat. 937 (amended 1979) (codified at 22 U.S.C. § 2151 note (Supp. III 1979)).

[209] *Uganda Hearings, supra* note 202, at 127 (statement of William Harrop).

[210] Exec. Order No. 11,888, 3A C.F.R. 207 (1975).

[211] *Uganda Hearings, supra* note 202, at 127 (statement of William Harrop).

[212] *See, e.g.*, H. Con. Res. 612, 95th Cong., 2d Sess. (1978), *reprinted in U.S.-Uganda Relations: Hearings Before the Subcomm. on Africa, Int'l Organizations and Int'l Economic Policy & Trade of the House Comm. on Int'l Relations*, 95th Cong., 2d Sess. 305-06 (1978) ("strongly condemns" human rights violations and "urges" President to implement measures "such as an embargo on trade"); *Uganda Hearings, supra* note 202, at 5 (statement of Sen. Hatfield); N.Y. Times, June 14, 1978, at 12, col. 4 (letter from 42 congressmen and 8 senators to the President).

[213] *Uganda Hearings, supra* note 202, at 127 (statement of William Harrop); *id.* at 106-07 (statement of Rauer Meyer).

[214] *Uganda Hearings, supra* note 202, at 127 (statement of William Harrop).

[215] *See id.* at 106-08 (statement of Rauer Meyer).

[216] In 1978, Uganda was in Country Group V, 15 C.F.R. Part 370, Supp. No. 1 (1978). The only exports which ordinarily require a validated license for export to destinations in Group V are those unilaterally or multilaterally controlled to all destinations. *See* The Commodity Control List, *supra* note 70. As of June 1978, only dual-use national security items, nuclear power items, and three categories of items requiring validated licenses so their export could be scrutinized under the human rights policy were so controlled. The human rights controls applied to certain nonmilitary aircraft, ECCN 4460B, certain crime control and detection equipment, *see* notes 266-90 *infra* and accompanying text, and certain listening devices, ECCN 4517B. *See Senate EAA Hearings Part I, supra* note 106, at 65 (statement of Commerce Department); *id.* at 219-22 (statement of State Department). All were unilaterally controlled to all or most destinations in Group V, including Uganda. By way of contrast, several

continued unimpeded.[217]

The Administration opposed additional trade controls, arguing that restrictions on exports would have little effect because export volume to Uganda was small and the United States was not the sole supplier of any significant Ugandan import.[218] Even though the United States imported one-third of Uganda's coffee exports (its major source of foreign exchange), the Administration contended that restrictions on imports would have little effect, reasoning that high coffee prices would induce other nations to purchase any part of the Ugandan crop not bought by the United States.[219] Other coffee importing nations had shown no interest in cooperating with an American ban on imports.[220]

In Congress, however, it was widely believed that the magnitude of American coffee imports gave the United States substantial influence over Uganda, perhaps enough to oust Amin.[221] Others argued that, whatever the economic or political effect, an American embargo would be symbolically important.[222] In October 1978, Congress swept aside the Administration's arguments and imposed a mandatory ban on both imports from and exports to Uganda.[223] This was the first

---

commodities required validated licenses for export to other countries in Group V, notably South Africa and certain Middle East nations. *Id.*

[217] *Uganda Hearings, supra* note 202, at 127 (statement of William Harrop).

[218] *Id.* at 106, 128 (statement of Rauer Meyer).

[219] *Id.* at 128 (statement of William Harrop). United States imports from Uganda in 1977 totalled $248 million, virtually all of which consisted of coffee. *Id.* at 105 (statement of Rauer Meyer). *See id.* at 2 (statement of Sen. Church); *id.* at 4 (statement of Sen. Hatfield).

[220] *Id.* at 128 (statement of William Harrop).

[221] Senator Hatfield, for example, argued that while an import embargo could not "guarantee the overthrow of Amin," it could be imposed "with expectations of success" since other importing nations might go along. *Id.* at 6-7 (statement of Sen. Hatfield). Representative Pease felt that coffee imports gave the United States "real power to affect events in Uganda. . . . Whether Amin would fall from power if he lost his coffee revenue from the West is an open question; but the impact upon him would be very severe." *Id.* at 32-33, 35 (statement of Rep. Pease).

[222] *Id.* at 17-18 (statement of Michael Posner).

[223] Bretton Woods Agreement Amendments Act, Pub. L. No. 95-435, § 5(c)-(d), 92 Stat. 1051 (1978) (§ 5(c) repealed 1979; § 5(d) codified at 50 U.S.C. app. § 2403 (Supp. III 1979) (expired 1979)). The embargo provision was a rider to the statute, which authorized United States participation in the IMF Supplemental Financing Facility. A related provision "directed" the President to support international actions, including economic restrictions, against Uganda. Pub. L. No. 95-435, § 5(e), 92 Stat. 1051 (1978) (repealed 1979). Prior legislation, Foreign Relations Authorization Act, Fiscal Year 1979, Pub. L. No. 95-426, tit. IV, § 610(b)-(d), 92 Stat. 63 (codified at 22 U.S.C. § 2151 note (Supp. III 1979)) (expired 1979), had "urged" the President to support international action to bring

unilateral American embargo that did not have its origin in armed hostilities or similar circumstances.[224] It was based instead on congressional findings that the government of Uganda had committed "genocide" and that the unique economic relationship of the United States justified "an exceptional response."[225]

The embargo statute prohibited the importation of "any article grown, produced or manufactured in Uganda" until the President certified to Congress that the government of Uganda was no longer "committing a consistent pattern of gross violations of human rights."[226] The import ban was to be administered by the Treasury Department, in consultation with the State Department,[227] but regulations were never promulgated because American companies had already ceased buying Ugandan coffee under the pressure of congressional and other public criticism.[228]

The ban on exports to Uganda, enacted as an amendment to EAA '69,[229] was similar in form to the import prohibition, but with two significant differences. First, it permitted the continued exportation of food products, a major part of American exports to Uganda. Second, it prohibited the export of all other items "subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States."[230] Under the American approach to national jurisdiction, and in line with a 1977 amendment to EAA '69,[231] this language made the export prohibition applicable to foreign firms controlled by Americans, a controversial extension of American

---

about change in Uganda and required the Secretary of State to report the steps taken. It had also expressed the "sense of the Congress" that the President should prohibit exports of military, paramilitary, and police equipment to Uganda and should propose a United Nations arms embargo, among other measures.

[224] *See* Note, *supra* note 205, at 209.

[225] Bretton Woods Agreement Amendments Act, Pub. L. No. 95-435, § 5(a), 92 Stat. 1051 (1978) (repealed 1979).

[226] *Id*. at § 5(c) (repealed 1979). The statute did not refer to "internationally recognized" human rights as most similar statutes do.

[227] Exec. Order No. 12,117, 3 C.F.R. 362 (1979), *reprinted in* 22 U.S.C. § 2151 note, at 532 (Supp. III 1979).

[228] *See Uganda Hearings, supra* note 202, at 129 (statement of William Harrop).

[229] Bretton Woods Agreement Amendments Act, Pub. L. No. 95-435, § 5(d), 92 Stat. 1051 (1978) (expired 1979).

[230] *Id*.

[231] Act of Dec. 28, 1977, Pub. L. No. 95-223, § 301(a), (b)(1) (expired 1979); *see* note 13 *supra*.

law beyond United States territory.[232] The import ban, in contrast, prohibited only imports into the United States, its territories, and possessions, even though the potential for diversion of Ugandan coffee purchases to foreign subsidiaries of American companies had been acknowledged by Congress.[233]

The Commerce Department hastily adopted a regulation that simply repeated the terms of the statute, superseding any inconsistent provisions in the Regulations.[234] Detailed permanent regulations—including controversial provisions to implement the embargo as to controlled foreign firms—were proposed in December 1978,[235] but events overtook the American embargo before the regulations could be finally adopted. In April 1979, a force of Tanzanian soldiers and Ugandan exiles captured Kampala, driving Amin from the capital and establishing a provisional government.[236] Welcoming Amin's overthrow, the United States moved to establish normal relations with the new government.[237] President Carter certified an end to human rights violations (fulfilling the condition imposed by the statute),[238] the temporary export control regulation was deleted, and the proposed regulations were withdrawn.[239] In September 1979, Congress repealed the embargo legislation.[240]

2. *The South African Military and Police: An Embargo of Disfavored Institutions*

Because of its racial policies, South Africa has been the target of various trade restrictions imposed by the United Nations, the United States, and other nations.[241] The American restriction with the greatest effect on commercial exports dates from 1978, when the Carter Administration embargoed all exports and reexports of United States-origin goods and unpublished technical information to or for the use of any "military and police entities" in South Africa.[242] Although the Administration asserted that its action was intended both to strengthen American implementation of a United Nations arms embargo and to further United States foreign policy regarding human rights,[243] the President had authority to impose the controls only under the foreign policy clause of EAA '69, because the relevant Security Council resolutions related only to exports of arms and related equipment.[244]

---

[232] *See* text accompanying notes 618-55 *infra*.

[233] *See*, *e.g.*, *Uganda Hearings*, *supra* note 202, at 64-65 (statement of Sen. Church).

[234] 43 Fed. Reg. 49,304 (1978) (repealed 1979). The regulation was made effective retroactively to the date of the statute.

[235] 43 Fed. Reg. 58,571 (1978).

[236] *See* N.Y. Times, April 12, 1979, at A-1, col. 1.

[237] *Id*. at A-16, col. 3.

[238] Memorandum of May 15, 1979, 3 C.F.R. 485 (1980).

[239] 44 Fed. Reg. 31,010 (1979).

[240] International Development and Food Assistance Act of 1978—Uganda, Pub. L. No. 96-67, 93 Stat. 415 (1979) (amending 22 U.S.C. § 2161, with regard to aid to Uganda, and repealing 50 U.S.C. app. § 2403(m)).

[241] Most notable is the embargo on arms sales mandated by the Security Council. *See* note 2 *supra*. While the arms embargo is primarily administered by the State Department, the Commerce Department controls exports of arms-related commodities within its jurisdiction. *See* 15 C.F.R. § 385.4(a)(1) (1980); Mehlman, Milch & Toumanoff, *United States Restrictions on Exports to South Africa*, 73 AM. J. INT'L L. 581, 587 n.40, 589 n.53 (1979). The commodities so controlled are listed in 15 C.F.R. Part 379, Supp. No. 2 (1980). Related technical data are also controlled. *See id*. at § 385.4(a)(3), 379.4(e) (1979). Licensing pol-

The South African embargo extends to "*any* commodity, including commodities that may be exported to any destination in Country Group V under a general license."[245] As in the case of Uganda,[246] many sensitive exports already required validated licenses for export to South Africa in 1978.[247] A restric-

---

icy relating to exports of these arms-related items was made more restrictive in 1978. 43 Fed. Reg. 7311 (1978); *see* Mehlman, Milch & Toumanoff, *supra* at 582-85, 589.

The United States also controls the export of certain nonmilitary aircraft, helicopters, and related equipment to any consignee in South Africa. *See* 45 Fed. Reg. 1599-1601 (1980) (to be codified at 15 C.F.R. §§ 385.4, 399.4). Aircraft exports are only licensed on receipt of adequate written assurances of exclusively civilian use. 45 Fed. Reg. 1599 (1980) (to be codified at 15 C.F.R. § 385.4(a)(8)); *House EAA Hearings Part I, supra* note 21, at 132 (statement of William Root).

The validated license requirements applicable to certain advanced computers (ECCN 1565A), already controlled for national security purposes, were extended in 1980 (with certain exceptions) to exports to certain South African government agencies on foreign policy grounds. 45 Fed. Reg. 1599 (1980) (to be codified at 15 C.F.R. § 385.4(a)(9)). Early in 1981, a validated license was required for the export of any computer, regardless of performance level, to such governmental agencies. 46 Fed. Reg. 1258 (1981).

[242] 43 Fed. Reg. 7311 (1978) (amending 15 C.F.R. Parts 371, 373, 379, 385, 386 & 399). The controls also apply to exports to Namibia. *Id.* 43 Fed. Reg. 43,450 (1978) (adding 15 C.F.R. Part 385, Supp. No. 2), designated the following controlled entities: The Armaments Development and Production Corporation (ARMSCOR), the Department of Prisons, the Bureau of State Security, and the South African Railways Police Force; the National Institute of Defense Research, in cases where the exported goods or information will be used in a research project for the military or police; and certain other law enforcement officials, not associated with the specified agencies, who perform duties similar to those of police in the United States.

[243] 43 Fed. Reg. 7,311 (1978); *House EAA Hearings Part I, supra* note 21, at 145-46 (statement of William Root).

[244] *See* notes 2, 241 *supra*.

[245] 15 C.F.R. § 385.4(a)(2) (1980) (emphasis in original).

[246] *See* text accompanying notes 212-16 *supra*.

[247] These items included equipment related to arms, certain aircraft, crime detection devices, and the dual-use items controlled to all destinations.

tive licensing policy had been in effect for arms-related items;[248] licensing policy for dual-use items had fluctuated with changes in administration.[249] The embargo, however, meant that no validated licenses would be issued for exports of any of these products to the South African military and police.[250] The embargo regulations also went much further: a validated license became necessary to export any product to the designated entities, even ordinary vehicles, office equipment, or other commercial items, and no such license would be granted. The embargo was intended to deny the controlled organizations access to all United States-origin goods and information.[251]

The embargo regulations prohibit not only exports and reexports to military and police consignees, but also exports and reexports to civilian South African[252] and third-country buyers when the exporter or reexporter knows (or has reason to know) that the goods are to be sold to or used by or for the regulated entities, or used to service equipment used by or for them.[253] Moreover, the regulations prohibit foreign purchasers from using American-origin parts or components to manufacture products abroad when the purchasers know (or have reason to know) that their products will similarly reach the controlled entities.[254]

---

[248] *See* 15 C.F.R. § 385.4(a)(1) (1978).

[249] *See* Mehlman, Milch & Toumanoff, *supra* note 241, at 583-85.

[250] *See Senate Foreign Policy Hearings, supra* note 119, at 281-82 (statement of Charles W. Stewart); *U.S. Export Control Policy and Extension of the Export Administration Act: Hearings on S. 737 and S. 999 Before the Subcomm. on International Finance of the Senate Comm. on Banking, Housing and Urban Affairs—Part II*, 96th Cong., 1st Sess. 262-67 (1979) [hereinafter cited as *Senate EAA Hearings Part II*] (statement of Charles W. Stewart). The requirement of a validated license flows from 15 C.F.R. § 371.2(c)(10) (1980). The embargo as a matter of licensing policy is stated in *id.* at § 385.4(a)(2)-(3).

[251] 43 Fed. Reg. 7311 (1978).

[252] A special destination control statement is required on bills of lading and commercial invoices used in exports to civilian consignees in South Africa, giving notice that the goods may not be resold or otherwise delivered to or for the use of the designated entities. 15 C.F.R. § 386.6(a)(2), (d)(3) (1980).

[253] *Id.* at §§ 385.4(a)(2), 371.2(c)(11), 373.1(a). Foreign consignees and distributors approved for participation in special licensing procedures must certify that goods originating in the United States will not be made available to the designated entities. *Id.* at § 373.1(a)(2).

The fact that the controls apply to American exports to third-country purchasers and civilian South African purchasers only when the American exporter has reason to know that the goods are to be made available to the military or police is criticized as a "key weakness" of the controls in Mehlman, Milch & Toumanoff, *supra* note 241, at 593, 595. The authors' suggested remedies for this and other weaknesses include expansion of the controls, the addition of reporting requirements for United States exporters, and stronger penalties for violations. *Id.* at 597-602.

[254] 15 C.F.R. § 385.4(a)(4) (1980).

The embargo applies just as expansively to the export and reexport of all nonpublic technical data under the licensing jurisdiction of Commerce,[255] and extends to transactions in which the "direct product" of the data (which might be an item of equipment, a process, or a service), or any "subsequent product of the direct product" (such as an item manufactured or produced by the equipment or process that is the direct product of the data), is to be delivered to, or used by or for, any of the designated South African organizations.[256]

The technical data regulations of the South African embargo appear to extend further than the realistic enforcement capabilities of the United States, especially in the area of reexports. The regulations, for example, purport to prohibit a French firm licensed to use an American company's technology from sub-licensing that technology to a private South African corporation when the French firm "knows or has reason to know" that equipment to be constructed with the aid of the technology will be used in the manfuacture of an item that will be used to service equipment owned by one of the designated South African police organizations. Assuming that the foreign parties involved would not advertise their agreement to American authorities, it would be very difficult to ascertain, let alone prove, the existence of the sub-license, the use made of the products of the data in South Africa, or the knowledge of the

---

[255] *Id.* at § 385.4(a)(3). The only information not subject to the embargo is that eligible for export under General License GTDA. *Id.* at §§ 385.4(a)(3), 379.3. When nonpublic technical data qualifies for export to civilian purchasers under General License GTDR (that is, when the United States exporter has no reason to know of any intended retransfer to the designated South African entities, *id.* at §§ 385.4(a)(3), 379.4(e)) the regulations require that the buyers be notified in writing that the direct product of the data—though apparently not the data itself, and in this case apparently not the subsequent products of the direct product—may not be made available in any direct or indirect way to the designated entities. *Id.* Exports to third countries appear to be covered only by a general provision in the regulations making it impermissible to export technical data from the United States to any destination when the exporter knows that the data is to be reexported, directly or indirectly, to any other destination without specific permission of OEA. *Id.* at §§ 379.8(a)(2), 371.2(c)(5). An exception from this prohibition is available when the contemplated reexport is to a destination to which the data could have been exported directly under General License GTDA or GTDR. *Id.* at § 379.8(b)(1). This exception would not be available if the contemplated reexport were of nonpublic data and were destined to or for the use of the South African military or police, since General License GTDR would not be available for such a direct export. *Id.* at § 379.4(e).

[256] *Id.* at §§ 385.4(a)(3), 379.4(e). This extension of the restrictions on technical data exports appears not to apply to exports to third countries, however. *See id.* at § 379.8(a)(2).

French firm.[257]

Even more severe enforcement problems arise if, in the same transaction, the original licensee of the American technology is a private South African company.[258] Information on internal transfers may be more difficult to obtain than information on reexports,[259] and a prohibition on internal retransfers might run afoul of South African law.[260] The only available penalty, if a violation could be established, would seem to be disqualification of the South African licensee from participation in subsequent American export transactions.[261] Moreover, the South African government could commandeer needed information or equipment from the civilian sector in an emergency.[262]

Many of the problems of coverage and enforcement in the South African embargo stem from the "middle road" policy of embargoing only particularly disfavored institutions.[263] This and certain other South African trade restrictions[264] are the only American export controls that formally apply only to particular institutions in a target nation. In practice, however, other controls, particularly those under the anti-terrorism and regional stability policies and the crime detection equipment controls discussed below, also focus on exports to foreign military and police forces and share similar enforcement problems.[265]

---

[257] *See* Mehlman, Milch & Toumanoff, *supra* note 241, at 593-96.

[258] *See Senate EAA Hearings Part II, supra* note 250, at 264 (statement of Charles W. Stewart). The embargo regulations appear to contain no provision prohibiting an internal transfer, although exporters of technical data to South African buyers must notify their buyers that the products of the data may not be made available to the military or police. *See* note 255 *supra*. The applicable regulations speak only of "exports" and "reexports"; a transfer of technical data or its products from a civilian buyer to a police agency within South Africa is clearly not a United States export and does not fall within the definition of a reexport either, 15 C.F.R. § 370.2 (1980). *But see* Mehlman, Milch & Toumanoff, *supra* note 241, at 593 n.63, 596.

[259] *See* Mehlman, Milch & Toumanoff, *supra* note 241, at 593-97; *House EAA Hearings Part I, supra* note 21, at 126 (statement of Stanley Marcuss). Information on diversion is obtained primarily from foreign service officials and intelligence agencies. *Id*.

[260] *See* Mehlman, Milch & Toumanoff, *supra* note 241, at 596 n.76.

[261] *See id*. at 593 n.63. This penalty has not been applied on a regular basis.

[262] *See id*. at 593 n.64; *Senate EAA Hearings Part II, supra* note 250, at 91 (statement of W. Robert McLellan).

[263] *See* Mehlman, Milch & Toumanoff, *supra* note 241, at 597. Short of moving to a total embargo, the authors suggest ameliorating some of the enforcement problems by prohibiting exports to all South African purchasers of any item which would be useful to the police and military in counterinsurgency operations; or by permitting such exports only when the exporter could establish that the items "would never reach governmental forces," *id*. at 598, a showing that seems impossible in light of the ability of such forces to commandeer civilian goods.

[264] Aircraft, for example, can only be exported with written assurances that they will not be used by military or paramilitary forces, and computer exports are controlled to particular South African government agencies. *See* note 241 *supra*.

3. *Crime Detection Equipment: Controls on the Instruments of Disfavored Conduct*

The Uganda and South Africa embargoes were products of American attitudes toward particular countries and their governments. Controls on exports of crime detection equipment, in contrast, have grown out of a more generalized American attitude toward particular conduct, wherever practiced: torture, suppression of dissidents, and other violations of basic human rights.[266]

Validated license controls on crime detection equipment were first imposed under EAA '69 in 1974.[267] The items subject to control have remained constant to the present day. In general terms, they include "any commodity particularly useful in crime control and detection,"[268] ranging from relatively simple items, such as fingerprinting equipment, riot guns, bullet proof vests, helmets and restraint devices, to sophisticated devices such as infrared and ultra-violet photographic equipment, mobile crime science laboratories, voice print identification equipment, and lie detectors.[269] Initially, however, the validated license requirement applied only to exports to Country Groups

---

[265] For example, aircraft and other items controlled under the anti-terrorism and regional stability policies, *see* notes 116-19, 166, 169 *supra*, are by their nature likely to be purchased by governmental agencies. The same is true for crime detection devices. *See* text accompanying notes 266-90 *infra*. Most items on the CCL are also closely scrutinized under the human rights policy when exported to military and police consignees. *See* text accompanying notes 276, 340-42 *infra*.

[266] Advocates of controls on such equipment refer to it as "citizen control equipment" to make the point that it can be used to monitor and control dissidents, minorities, or ordinary citizens in the hands of a repressive regime. *See Senate EAA Hearings Part II, supra* note 250, at 145, 157-58 (statement of Jerry Goodman).

[267] 39 Fed. Reg. 26,719 (1974) (codified in 15 C.F.R. § 376.14 (1975)).

[268] 15 C.F.R. § 376.14(a) (1980).

[269] *Id*. These examples in the Regulations are intended to supplement the more specific listings of controlled items in the CCL, including items under ECCNs 4597B, 5480B, 5597B, 5680B, 5998B and 5999B (1979). ECCN entries may list specific controlled items in some detail, such as "leg irons, shackles, handcuffs, [and] thumbscrews." ECCN 5680B. In 1980, related nonpublic technical data was also placed under control. *See* 15 C.F.R. § 376.14(a) (1980), *as amended by* 45 Fed. Reg. 1598 (1980).

Q, W, and Y,[270] then including the U.S.S.R., Eastern Europe, and the People's Republic of China.[271] Although the Commerce Department stated only that these controls were imposed because the affected exports "would be contrary to the foreign policy interests of the United States,"[272] the timing of the measure suggests that it was a response to the problems of emigration and treatment of dissidents in the U.S.S.R., then major issues in the United States.[273] Soon after the Carter Administration came into office, validated license controls were extended to all purchasers in South Africa.[274]

The regulations were expanded in 1978[275] to require a validated license for exports of crime detection equipment to all destinations except the member nations of NATO, Japan, Australia, and New Zealand. The stated purpose of these expanded controls was to allow the Commerce and State Departments[276] to review proposed exports and determine whether the equipment to be sold would be used in consonance with the American human rights policy.[277]

Congress in 1978 wrote the existing controls into EAA '69,[278] calling for particular scrutiny by the State Department of proposed sales to police and internal security forces with records of torture and other abuses of human rights.[279] Legislation was said to be required to ensure that enforcement of the existing controls would not be subject to "administrative discretion."[280] To strengthen enforcement, the statute provided that no licenses were to be issued for exports of controlled equipment to any country whose government engages in a consistent pattern of gross violations of internationally recognized human rights unless the President certified that extraordinary circumstances warranted the granting of licenses.[281]

---

[270] 15 C.F.R. § 376.14(a) (1975) (current version at 15 C.F.R. § 376.14 (1980)). All exports, including crime detection equipment, were of course embargoed to the nations in Group Z and, at that time, Group S (Rhodesia). 15 C.F.R. §§ 385.1, .3 (1975).

[271] 15 C.F.R. Part 370, Supp. 1 (1974). The People's Republic of China now constitutes Country Group P. 45 Fed. Reg. 27,922 (1980).

[272] 39 Fed. Reg. 26,719 (1974).

[273] The major American response was the well-known Jackson-Vanik Amendment. *See generally* Note, *An Interim Analysis of the Effects of the Jackson-Vanik Amendment on Trade and Human Rights: The Romanian Example*, 8 LAW & POL'Y INT'L BUS. 193 (1976).

[274] 42 Fed. Reg. 36,991 (1977) (codified at 15 C.F.R. § 376.14 (1978)). Namibia was also included in the controls. *Id.*

[275] 43 Fed. Reg. 27,985-86 (1978) (codified at 15 C.F.R. §§ 376.14, 385.2, .4, .5 & Pt. 373, Supp. No. 1 (1980)). These regulations were made retroactively effective. *See* Bingham & Johnson, *supra* note 117, at 914.

[276] The State Department reviews applications for licenses to export crime detection equipment and many other items on the CCL to police and military consignees in most countries from a human rights perspective. *See Senate EAA Hearings Part I, supra* note 106, at 219-22 (statement of Richard Cooper).

[277] 43 Fed. Reg. 27,985-86 (1978). A similar rationale supported controls on the export to all destinations of "bugging" equipment, used for surreptitious listening to wire or oral conversations, such as the "martini olive transmitter." *See* 15 C.F.R. § 376.13 (1980).

[278] International Security Assistance Act of 1978, Pub. L. No. 95-384, § 6(d)(2), 92 Stat. 730, 50 U.S.C. app. § 2403(m) (Supp. III 1979). The original bill would have placed the equipment on the Munitions List (S. 3075, 95th Cong., 2d Sess. 1978), but a floor amendment by Senator Stevenson moved the controls to the EAA. 124 CONG. REC. S11,814 (daily ed. July 26, 1978).

Given the stated intent to focus controls on nations with records of extreme human rights abuse, some were concerned that the statute made Sweden, Switzerland, and other nations with exemplary human rights records subject to the same validated license controls as the worst violators of human rights.[282] Acting on this concern in EAA '79, Congress gave the President authority to exempt individual nations,[283] but no country has yet been formally exempted.[284] The State Department has endeavored instead to minimize unnecessary trade disruption by waiving review of license applications for exports to "clean" nations like Sweden and Switzerland;[285] for foreign relations reasons, this procedure was preferred over a publicly promulgated list of nations whose purchases were thought to require scrutiny under the American human rights policy.[286]

The result, however, is still a burden on trade in the controlled items. Even if review is waived by the State Department, exports to "clean" countries continue to require validated licenses from the Commerce Department, involving both expense and delay. Exports to all nations not considered "clean" must be reviewed by both departments, involving further delay. The State Department routinely approves the applications it reviews unless they involve exports to military or police forces (which most presumably do) and unless the government of the importing nation commits "serious" human rights abuses.[287] A recently adopted statement of licensing policy delineates the considerations applied by the State and Commerce Departments in unusual detail and indicates that applications are generally considered favorably.[288] Still, a large number of applications are reviewed on a case-by-case basis,[289] and there have been significant delays in processing even uncontroversial applications.[290]

---

[279] 124 Cong. Rec. S11,814 (daily ed. July 26, 1978) (remarks of Sen. Stevenson).

[280] *Id.*

[281] 22 U.S.C. § 2304(a)(2) (Supp. III 1979).

[282] *See* S. Rep. No. 96-169, *supra* note 31, at 19.

[283] 50 U.S.C. app. § 2405(j)(2) (Supp. III 1979).

[284] *See* 45 Fed. Reg. 1595, 1596 (1980) (President's extension of foreign policy controls beyond Dec. 31, 1979, states that validated licenses are required to all destinations except those named in statute).

[285] *See Senate EAA Hearings Part I, supra* note 106, at 221 (statement of Richard Cooper); *House EAA Hearings Part I, supra* note 21, at 149 (statement of William Root).

[286] *See House EAA Hearings Part I, supra* note 21, at 148 (statement of William Root).

4. *Petroleum Equipment Exports to the Soviet Union: A Signal of National Displeasure*

In 1978, on the personal decision of President Carter,[291] the Commerce Department placed under validated license control exports to the Soviet Union of most equipment used in exploring for and producing petroleum and natural gas.[292] The Commerce Department release that announced the new controls stated, somewhat opaquely, that the purpose of the controls was to assure that petroleum equipment exports "would be consistent with the foreign policy objectives of the United States."[293] No national security purpose was mentioned. In fact, exports of any petroleum equipment thought to have national security implications because of the technologies involved were already subject to controls.[294]

The foreign policy context in which these controls were imposed was shaped by a series of incidents in mid-1978 that had placed a "serious strain" on relations between the U.S.S.R. and the United States.[295] They included the arrest and trial of an American businessman on charges of violating Soviet currency laws;[296] the trial of American journalists;[297] and the trial and sentencing of the dissidents Anatoly Shcharansky and Aleksandr Ginzburg.[298] The State Department has characterized the petroleum equipment controls as "a signal to the USSR that business could not continue completely as usual" in light of these incidents,[299] and as "a signal to the Soviet Union of [United States] displeasure at various things that they were doing."[300] It is widely believed, however, that the controls were triggered primarily by the Shcharansky and Ginzburg sentencing,[301] and subsequent Administration statements described the petroleum equipment controls as part of the American human rights policy.[302]

---

[287] *Senate EAA Hearings Part I, supra* note 106, at 221 (statement of Richard Cooper).

[288] 45 Fed. Reg. 1595 (1980).

[289] *See id.; House EAA Hearings Part I, supra* note 21, at 136-37 (statement of William Root).

[290] *House EAA Hearings Part I, supra* note 21, at 137 (statement of William Root).

[291] *See Senate EAA Hearings Part I, supra* note 106, at 211 (statement of Richard Cooper).

[292] 43 Fed. Reg. 33,699 (1978) (amending 15 C.F.R. § 379.4(f) and the Commodity Control List) (current version at 15 C.F.R. § 379.4(f) (1980)).

[293] 43 Fed. Reg. 33,699 (1978).

[294] *Senate EAA Hearings Part I, supra* note 106, at 50 (statement of Stanley Marcuss). The Defense Department has stated that exports of petroleum exploration and production equipment of the kinds controlled in 1978 do not contribute significantly to Soviet military strength, since Soviet military requirements are only a small fraction of domestic oil production and would in any case have priority in the allocation of domestic supplies. *See House EAA Hearings Part I, supra* note 21, at 177 (statement of Ellen Frost). The Administration was of course concerned with Soviet petroleum production capabilities because of the implications for Soviet industrial strength and foreign policy, and Commerce had been monitoring petroleum equipment exports before the controls were imposed. *See Senate EAA Hearings Part I, supra* note 106, at 58 (letter from Sen. Proxmire).

Although virtually all commodities used primarily to explore for or produce oil and gas were subject to the new requirement,[303] the controls applied only to exports to the Soviet Union, not to exports to Eastern Europe or other Soviet allies, where a danger of transshipment presumably exists. Special restrictions were imposed on exports of nonpublic information relating to the designated equipment. Such data already required a validated license for export to the U.S.S.R. and other Communist countries;[304] the 1978 regulations provided that such information could only be exported to other destinations under general license if written assurances were obtained from the importer that neither the data itself nor its "direct product" would be shipped, directly or indirectly, to the U.S.S.R.[305] In addition, validated licenses were required for exports of this information to any destination when the American exporter knew or had reason to believe that the direct products of the data, to be produced abroad, were intended to be exported or reexported, directly or indirectly, to the U.S.S.R.[306]

---

[295] *Senate EAA Hearings Part I, supra* note 106, at 31 (statement of Juanita Kreps).

[296] *See* N.Y. Times, August 13, 1978, at 1147 (microfilm ed.). The businessman, Jay Crawford, an employee of International Harvester Corporation, was tried in September 1978 and received a suspended sentence. *Id*., Sept. 7, 1978, at 71 (microfilm ed.); *id*., Sept. 8, 1978, at 31 (microfilm ed.). He was allowed to leave the U.S.S.R. in October amid a general relaxation of tensions. *Id*., Oct. 20, 1978, at 37 (microfilm ed.).

[297] *Id*., July 24, 1978, at 2, col. 1.

[298] *Id*. Shcharansky and Ginzburg went on trial July 10, 1978, on charges of espionage and subversion. *Id*., July 11, 1978, at 1, col. 5. The trials were condemned by President Carter. *Id*., July 13, 1978, at 1, col. 6. On July 13 and 14, 1978, the two were given harsh sentences. *Id*., July 14, 1978, at 1, col. 5; *id*., July 15, 1978, at 1, col. 6.

[299] *Senate EAA Hearings Part I, supra* note 106, at 224 (statement of Richard Cooper); *House EAA Hearings Part I, supra* note 21, at 954 (statement of William Root).

[300] *Senate EAA Hearings Part I, supra* note 106, at 211 (statement of Richard Cooper).

[301] *See*, *e.g.*, 124 CONG. REC. S13,690 (daily ed. Aug. 17, 1978) (announcement by Sen. Stevenson of intention to hold hearings on the use of export controls and export credits); Bingham & Johnson, *supra* note 117, at 915; N.Y. Times, July 19, 1978, at 1, col. 2. National Security Advisor Brzezinski, National Security Council staff member Samuel Huntington, and Senator Henry Jackson all stated after the trials had begun that the United States should interrupt trade transactions with the U.S.S.R. to show American displeasure. N.Y. Times, July 12, 1978, at 4, col. 3; *id*., July 13, 1978, at 4, col. 4.

[302] *Senate EAA Hearings Part I, supra* note 106, at 64-66 (statement of Commerce Department); *id*. at 109 (statement of Duane Sewell). When existing foreign policy controls were extended as required by EAA '79, however, the petroleum equipment controls were not identified with human rights, as were, for example, the controls on crime detection equipment. They were separately identified, and not associated with any underlying policy. *See* 45 Fed. Reg. 1596-97 (1980).

The controls were implemented through extensive case-by-case review of proposed transactions. In fewer than eight months, some 113 applications were considered;[307] seven agencies were involved in the review process;[308] and on average licensing decisions required some forty-five days, with some not made for more than ninety days.[309] Despite the complexity of the bureaucratic procedures set in motion, however, the Administration apparently had no intention of denying any petroleum equipment licenses,[310] and none were in fact denied[311] until a freeze on high technology exports to the U.S.S.R. was imposed in January 1980.[312] According to the Commerce Department, before the freeze not one of the reviewing agencies had even recommended denial of a single license application.[313]

---

[303] Validated licenses had previously been required only if these items were to be exported to the embargoed nations in Country Groups S and Z. 15 C.F.R. §§ 385.1(a), 385.3 (1979). The regulations added a number of new entries to the CCL, all of which were controlled for export to Group S (Group S was terminated with the end of the Rhodesia embargo), Group Z and the U.S.S.R., including Latvia, Estonia, and Lithuania. 43 Fed. Reg. 33,700 (1978).

[304] 15 C.F.R. § 379.4(b) (1977).

[305] 43 Fed. Reg. 33,699 (1978); *see* 15 C.F.R. § 379.4(f)(1) (1980).

[306] 15 C.F.R. § 379.4(f)(1) (1980). The Regulations provide generally that technical data may not be exported when the exporter knows that the data itself is to be reexported to any destination other than that authorized. 15 C.F.R. § 379.8(a)(2) (1980).

[307] *Senate EAA Hearings Part I, supra* note 106, at 66 (statement of Commerce Department); *cf. Senate EAA Hearings Part III, supra* note 116, at 163 (statement of Douglas J. Barnett, Jr.) (indicating 120 cases from Oct. 25, 1978, to March 13, 1979). Some strain was imposed on the resources of the licensing bureaucracy by the additional complex cases. *See House EAA Hearings Part I, supra* note 21, at 122 (statement of Stanley Marcuss).

[308] *Senate EAA Hearings Part I, supra* note 106, at 66 (statement of Malcolm Browne). The agencies were the Departments of Commerce, State, Defense, Energy, and Treasury, the National Security Council, and the CIA.

[309] *Id.*

The United States did not request other nations to follow the American lead by imposing parallel controls, and none did so.[314] Although some studies had been conducted to determine whether and how quickly the Soviets could obtain similar equipment from other countries, it does not appear that an extensive effort was made, and no firm conclusions were reached.[315] Representatives of the petroleum equipment industry contend that the controlled items are in fact available elsewhere,[316] but their position has been disputed by others.[317]

The manner in which the validated license requirement for petroleum equipment exports was implemented accords well with the State Department's description of the requirement as a "signal" to the U.S.S.R. It has been suggested that the requirement was intended as a "reprisal" for Soviet actions[318] or as a means to force the U.S.S.R. to improve its treatment of dissidents or make other political concessions.[319] Under either of these assumptions, however, its later implementation (or lack thereof) seems baffling. The petroleum equipment controls appear to be simply a diplomatic gesture, a move in a game of largely symbolic actions, an effort to "fine tune" trade relations to the political relations of the day.[320]

---

[310] *No Barrier to Soviet Trade Seen Under U.S. Export Regulations*, OIL & GAS J., Aug. 7, 1978, at 53 (quoting Stanley Marcuss).

[311] *Senate EAA Hearings Part I, supra* note 106, at 198 (statement of Richard Cooper); *Senate EAA Hearings Part III, supra* note 116, at 41 (statement of Frank Weil).

[312] *See* text accompanying notes 805-07 *infra*.

[313] *Senate EAA Hearings Part I, supra* note 106, at 66 (statement of Malcolm Browne).

[314] *Id.* at 210 (statement of Richard Cooper).

[315] *Id.* at 66 (statement of Malcolm Browne).

[316] *E.g.*, *Senate Foreign Policy Hearings*, *supra* note 119, at 67-69 (statement of C. William Verity); *House EAA Hearings Part I, supra* note 21, at 67-68, 83-84 (statement of James Giffen).

[317] *See* Huntington, *Trade, Technology, and Leverage: Economic Diplomacy*, 32 FOREIGN POL'Y 63, 73 (1976), *reprinted in Senate Foreign Policy Hearings, supra* note 119, at 157, 161. *See generally House EAA Hearings Part I, supra* note 21, at 914-33 (report of Congressional Research Service on energy technology controls).

[318] 124 CONG. REC. S13,690 (daily ed. Aug. 17, 1978) (announcement by Sen. Stevenson of intention to hold hearings on use of export controls and export credits).

[319] *Id.* *See generally* Huntington, *supra* note 317.

5. *The TASS Computer: The Uses of Licensing Policy*

All four of the controls considered so far have involved the imposition of validated license requirements—what is generally meant by "export controls." The requirement of a validated license, however, is only a beginning: a licensing policy must also be established.[321] The policy may be one of embargo, as in the cases of Uganda and South Africa, or it may be to approve all applications, as in the case of the petroleum equipment controls. In many cases, however, the administrators of the controls will wish to retain the ability to "open and close the economic door"[322] by granting or denying licenses on a case-by-case basis as in the case of crime detection equipment.

The denial of individual licenses may be seen as a separate form of foreign policy export control; the regional stability and anti-terrorism policies, among others, have been largely implemented through denials of licenses that were initially required for quite different purposes, usually national security. License denial is a popular technique for several reasons. License denial affects only the particular transaction involved; it need not prejudice future transactions. It may thus be seen by the target nation as less threatening than the imposition of new validated license controls or a hardening of licensing policy. Moreover, a license can often be denied more rapidly than new controls or licensing policies can be drafted; this gives foreign policy makers greater flexibility because a license for the export of any item on the CCL can be quickly denied whenever action is called for. License denials also permit greater flexibility to reverse or modify policy toward the target nation; validated license requirements, in contrast, are difficult to remove discreetly when they have outlived their usefulness.

---

[320] One possibility may be that the controls were imposed prematurely. Later, evidence of other sources for the equipment—*see Senate EAA Hearings Part I, supra* note 106, at 66 (statement of Malcolm Browne); *House EAA Hearings Part I, supra* note 21, at 939 (statement of Stanley Marcuss)—along with consideration of the possible political and even military consequences of a Soviet oil shortage—*see Senate EAA Hearings Part I, supra* note 106, at 87, 103-04 (statements of Duane Sewell); *No Barrier to Soviet Trade Seen Under U.S. Export Regulations*, OIL & GAS J., Aug. 7, 1978, at 53—may have led to the decision not to deny any licenses.

[321] The licensing policies followed in regard to most controls are spelled out in the Regulations, though often only in the broadest terms. *See* 15 C.F.R. Parts 376, 385 (1980) (special commodity and country policies). In 1980, some statements of policy were added, and others made more specific. 45 Fed. Reg. 1595 (1980) (to be codified at 15 C.F.R. §§ 376.14, 385.1, .2, .4).

[322] Huntington, *supra* note 317, at 160.

A number of recent license denials based on foreign policy considerations have involved proposed exports of computers to the Soviet Union.[323] The best known case may be the decision of President Carter in July 1978 to deny Sperry Rand Corporation's application for a license to export a Sperry Univac computer to TASS, the official news agency of the Soviet Union. The computer, to be sold for $6.8 million, was to be used for coverage of the 1980 Olympic Games in Moscow.[324]

The President's decision was made simultaneously with the decision to control petroleum equipment exports to the U.S.S.R.[325] Like the petroleum equipment controls, denial of Sperry Rand's application—and others known to be pending—had been urged during the trials of Shcharansky and Ginzburg by the President's National Security Advisor and his staff, and by Senator Jackson and other members of Congress.[326] The Administration indicated that both actions had been taken primarily to protest the sentences imposed on the two dissidents.[327]

After denying the license, the Administration requested other computer-exporting nations to refrain from selling to TASS.[328] While some countries responded ambiguously, France left no doubt as to its position: "[I]t is not the habit in

---

[323] A similar episode occurred in October 1979. While Washington considered how to deal with disclosures of Soviet troops in Cuba, it was reported that the Defense Department had withdrawn its approval of the export of a Control Data Corporation computer to the U.S.S.R. at the urging of National Security Advisor Brzezinski. According to Control Data, the computer used ten-year old technology and was an "add on" to similar equipment sold three years before. The Defense Department had already cleared the sale on two occassions in reviews conducted on the basis of national security. While the reversal in policy was formally based on security considerations, Defense Department officials made clear that the decision was political, "to express to Moscow Washington's displeasure" over the troops. N.Y. Times, Oct. 7, 1979, at E-5, col. 1.

[324] *See International Computer Policy*, D.M., Nov. 1978, at 44; *Trade Policy Flap Grows After Computer Cancellation*, INFOSYSTEMS, Sept. 1978, at 22.

[325] *See* N.Y. Times, July 19, 1978, at 1, col. 2; Wall St. J., July 19, 1978, at 4, col. 1.

[326] *Asking Allies to Snub TASS, Too,* BUS. WEEK, Aug. 21, 1978, at 123; *Using Trade to Influence Russia*, BUS. WEEK, July 24, 1978, at 181; N.Y. Times, July 12, 1978, at 4, col. 3; *id.*, July 13, 1978, at 4, col. 4; Wall St. J., July 19, 1978, at 4, col. 1.

[327] Wall St. J., July 19, 1978, at 4, col. 1. *See* Bingham & Johnson, *supra* note 117, at 910.

[328] *Asking Allies to Snub TASS, Too*, BUS. WEEK, Aug. 21, 1978, at 123; N.Y. Times, Aug. 17, 1978, at 126. In the past, France, Germany, Japan, and other nations had supplied the U.S.S.R. with computers that the United States had refused to sell on national security grounds.

France to subordinate the sales abroad of industrial material for civilian uses to political considerations. Where would we sell if that were the practice?"[329] A French firm eventually secured the order for the TASS system.[330]

License denials affecting items already on the CCL are often difficult to analyze: the proposed export of an item like the Sperry Rand computer may raise legitimate national security concerns while simultaneously presenting administrators with a tempting foreign policy opportunity.[331] Sperry Rand's application had been under consideration for several months, presumably because of its national security implications, when the decision to deny the license was made.[332] The President stated that approval of the export would have led to a "quantum leap" in Soviet computer capability and that the capabilities of the Univac computer were "far in excess" of the needs of TASS.[333] Sperry Rand, on the other hand, denied that its computer posed a danger to American security, arguing that a nearly identical system had previously been sold to the Soviet airline Aeroflot and that Sperry had already lowered the capabilities of the computer ordered by TASS at the request of the Commerce Department.[334] The computer industry generally believed that denial of the license on national security grounds would have been unwarranted,[335] while foreign nations and many other observers were simply confused as to the relative weight given national security and foreign policy considerations in the decision to deny the license.[336] The timing and context of the Sperry Rand case, however, strongly suggest that, even if the license might ultimately have been denied on national security grounds, the actual decision was "a political call."[337]

---

[329] N.Y. Times, Aug. 17, 1978, at 126 (microfilm ed.).

[330] *Senate EAA Hearings Part III, supra* note 116, at 27-29, 38-39 (statement of Frank Weil). Several months later, Sperry Rand was issued a license to export a modified system. *Id*.

[331] *See id*. at 27-29.

[332] Wade, *American-Soviet Relations: The Cancelled Computer*, 201 Sci. 422, 424-26 (1978).

[333] *Id*. at 425.

[334] *Asking Allies to Snubb TASS, Too*, Bus. Week, Aug. 21, 1978, at 123; *International Computer Policy*, D.M., Nov. 1978, at 44. *Cf. Senate Foreign Policy Hearings, supra* note 119, at 255, 256 (statement by Members of Emergency Committee for American Trade).

[335] An ironic statement of the industry position was that the only "quantum leap" involved in the transaction was that executed by the White House staff over the licensing officials at the Commerce Department. *Asking Allies to Snubb TASS, Too*, Bus. Week, Aug. 21, 1978, at 123; *see also* text accompanying note 333 *supra*.

[336] *See House EAA Hearings Part I, supra* note 21, at 42 (statement of Dimitri Simes).

The qualities that make license denials popular within the executive branch as a technique of foreign policy make them highly unpopular with exporters. Cases like the Sperry Rand episode lead exporters to believe that their transactions can be prohibited simply because of the coincidence that their license applications are pending when American foreign policy makers are seeking a means of expressing American displeasure over some event abroad. Exporters may also conclude that they cannot predict what considerations will affect decisions on their applications. Although some licensing policies are delineated in the Regulations,[338] these statements typically fail to bring any great degree of predictability to trade in the controlled items. Many other licensing policies are never made explicit. There is no statement in the Regulations, for example, of the policies followed in applying regional stability, military balance, or anti-terrorism considerations to decisions on licenses originally required for national security purposes.[339] Even more potentially disruptive of commerce, it is clear from the Sperry Rand case that human rights considerations are also applied to such licensing decisions even though no statement in the Regulations delineates or even acknowledges such a policy. It is known that recommendations based on human rights considerations are made by the State Department, and that the Department reviews exports of some items on the CCL to military and police-related purchasers in most nations,[340] yet the nations or institutions whose purchases are regularly reviewed or prohibited are not identified,[341] since the State Department sees publication of such information as "politically undesirable."[342] Consequently, from the point of view of the exporter, review of exports on human rights grounds is almost totally ad hoc. In cases like the Sperry Rand denial, licensing policy appears even more unprincipled, since such licensing "signals" are sent not in response to human rights conditions in the importing country, but in response to particular, unpredictable events.[343]

---

[337] *See id.* at 141 (statement of William Root); *Senate EAA Hearings Part III, supra* note 116, at 27, 38 (statement of Frank Weil); *Senate EAA Hearings Part I, supra* note 106, at 191 (statement of Richard Cooper); Bingham & Johnson, *supra* note 117, at 910-11; Wade, *supra* note 332, at 425.

[338] Applications for the export of crime detection equipment, for example,

> will generally be considered favorably . . . unless there is evidence that the government of the importing country may have violated internationally recognized human rights and that the judicious use of export controls would be helpful in deterring the development of a consistent pattern of such violations or in distancing the United States from such violations.

45 Fed. Reg. 1595, 1598 (1980) (to be codified at 15 C.F.R. § 376.14). *See* note 321 *supra*.

[339] *See* Bingham & Johnson, *supra* note 117, at 910; notes 116-19, 166 *supra*.

[340] *Senate EAA Hearings Part I, supra* note 106, at 219-22 (statement of Richard Cooper); *House EAA Hearings Part I, supra* note 21, at 147-49 (statement of William Root).

[341] COMPTROLLER GENERAL REPORT 1978, *supra* note 32, at 20.

IV. THE THEORY OF FOREIGN POLICY EXPORT CONTROLS

There has been little systematic analysis of the rationales, costs, and effectiveness of American political export controls, but there is a substantial body of relevant literature concerning the use of multilateral economic sanctions to enforce international law and to implement decisions of international organizations such as the League of Nations and the United Nations. This part of the Article draws upon that literature to analyze the two principal arguments advanced in support of foreign policy export controls—what this Article will call the instrumental and the symbolic rationales. The instrumental rationale, which is discussed first, argues that controls on exports—and on other forms of economic intercourse—can and should be used as sanctions[344] to force other nations (the "target" nations) to conform their conduct to norms of behavior approved by the United States. It asserts that, assuming a rational target nation government, the desired changes in target nation conduct will occur if the economic costs created by the denial of American goods or technology outweigh the benefits perceived by the target nation to flow from the challenged conduct.[345] The symbolic rationale, the second theory to be analyzed, holds that export controls, even if not instrumentally effective, can and should be used for expressive or symbolic purposes—to manifest American disapproval of the conduct of a target nation or to disassociate the United States from the target, for example—primarily as an ethical matter. The final section of this part of the Article examines the costs incurred by the nation imposing political export controls and argues that controls should not be used without a careful weighing of those costs.

---

[342] *House EAA Hearings Part I, supra* note 21, at 148 (statement of William Root).

[343] The implications of the unpredictability of licensing policy and other types of foreign policy export controls are considered at notes 552-76 *infra* and accompanying text.

[344] In social science terms, sanctions are the processes by which societies regulate the behavior of their members in support of social norms. *See* 14 INT'L ENCYCLOPAEDIA OF SOCIAL SCIENCE 1, 5 (1968). Some American export controls are said to have been imposed in support of norms of the international community ("internationally recognized human rights"), but even these have been imposed without authority from that community, except in the case of Security Council-mandated embargoes. Other United States export controls implement what are basically unilateral policies; such actions conform less closely to the definition of sanctions as instruments of social control.

In the generally accepted taxonomy of sanctions developed by Johan Galtung, American export controls would be classified as negative, unilateral, external economic sanctions. Galtung, *On the Effects of International Economic Sanctions, with Examples from the Case of Rhodesia*, 19 WORLD POL. 378, 381-83 (1967). Galtung analyzed negative, collective, external economic sanctions, such as the United Nations-mandated embargo of Rhodesia. *Id.* at 378-83. Such collective measures obviously correspond more closely to the social science understanding of sanctions.

American export controls are occasionally explicitly described as sanctions. *See* S. Con. Res. 100, *supra* note 146.

A. THE INSTRUMENTAL RATIONALE

1. *The Instrumental View of Trade Controls*

In a recent article concerning United States relations with the Soviet Union, Samuel P. Huntington presents one of the most explicit statements of the instrumental rationale.[346] Professor Huntington calls for an economic policy of "conditioned flexibility" in American dealings with the U.S.S.R.[347] Such a policy would differ from both the trade-denial approach of the Cold War years and the "laissez-faire" approach said to have characterized the period of "detente" in the early 1970s by encouraging American policy makers to "open and close the economic door" as security and political developments dictate.[348] Under this approach, American exports would be conditioned on specific actions by the Soviet Union—reflecting restraint in overseas troop deployment, support for Cuban military intervention, or repression of dissidents, for example—consistent with United States foreign policy.[349] In this way, the United States would capitalize on its economic resources to induce the

---

[345] *See* Huntington, *supra* note 317. He observes that "as good Marxist-Leninists, [the Soviets] are perfectly willing to calculate economic-political tradeoffs and make such exchanges when the benefits are, in their view, worth the cost." *Id*. at 73.

[346] *Id*. at 70-74. Professor Huntington is Director of the Center for International Affairs at Harvard University. In 1977 and 1978, he was coordinator of security planning for the National Security Council.

[347] *Id*. at 65-70.

[348] *Id*. at 65-67, 71.

[349] *Id*. at 67, 69.

U.S.S.R. to be more "cooperative" in areas important to American foreign policy.[350] Huntington cites the controls on petroleum equipment exports as an example of "conditioned flexibility."[351]

Professor Huntington sees formidable obstacles to the implementation of his economic strategy: "bureaucratic pluralism . . . ; congressional and interest group politics; . . . and most important, . . . a pervasive ideology that sanctifies the independence, rather than the subordination, of economic power to government."[352] He believes that the obstructive "intellectual and psychological environment" is changing.[353] Nonetheless, he proposes to overcome the obstructions posed by Congress, interest groups, and bureaucrats by centralizing control over almost all significant economic relations with the Soviet Union in the executive branch, specifically in the National Security Council.[354]

Achievement of the changes in target nation conduct predicted by Professor Huntington and other advocates of the instrumental rationale depends on the accuracy of two premises: first, that American export controls can effectively prevent controlled items from reaching the target nation so that economic costs are imposed on the target (economic effectiveness); and second, that such costs can successfully induce change in the target nation's policies (political success).[355] Each of these premises requires analysis.

2. *Economic Effectiveness of Controls*

a. Foreign Availability

If a target nation can easily and economically obtain from other sources goods or technology comparable to those denied by the United States, the economic costs it incurs will be minimal.[356] The existence of alternative sources for controlled items—foreign availability—is the most critical factor in assessing economic effectiveness,[357] yet it has never been given appropriate prominence in American export control legislation.

---

[350] *Id.* at 79; *cf.* note 345 *supra* (Soviet political cooperation when economically advantageous).

[351] *Id.* at 76-77.

[352] *Id.* at 71.

[353] *Id.* at 74-75.

[354] Industrial and agricultural exports, export credits, technology transfers, and "scientific contacts" would come within the jurisdiction of the National Security Council. *Id.* at 75. At the time Professor Huntington was writing, the President had already assigned to the National Security Council responsibilities in connection with grain sales, technology transfers, and export controls. *Id.* Since that time, the responsibilities of the National Security Council have been expanded despite efforts by Congress to limit its role. *See* note 31 *supra*.

[355] The distinction between economic effectiveness and political success is drawn in D. LOSMAN, INTERNATIONAL ECONOMIC SANCTIONS: THE CASES OF CUBA, ISRAEL AND RHODESIA 1, 43-44, 125 (1979).

Although EAA '69 from its adoption directed the President to consider the foreign availability of items proposed to be controlled for national security purposes,[358] a finding of foreign availability was never a bar to the imposition of such controls.[359] The Act prohibited controls on items available "without restriction from sources outside the United States in significant quantities and comparable in quality,"[360] but it also contained an exception that permitted the President to impose controls notwithstanding such foreign availability if "adequate evidence has been presented to [the President] demonstrating that the absence of such controls would prove detrimental to the national security."[361] Under this exception, the United States has historically controlled the export of many items available elsewhere,[362] and a number of such unilateral controls continue in effect today.[363] Although the soundness of the

---

[356] A range of costs may be created by export controls in spite of foreign availability. At one extreme, a target nation might incur only the administrative expense of finding and contracting with an alternative supplier. For example, the United States prohibits the export of writing paper to the South African police, *see* note 245 *supra* and accompanying text, but this prohibition can be nothing more than an inconvenience to police purchasing agents, who can easily obtain fully equivalent paper, at an equivalent price and transport cost, from a reliable supplier in another country. In other situations, the target nation may have to pay somewhat higher prices or transport costs, accept products of lesser quality, experience longer shipment delays, or the like. *See* D. LOSMAN, *supra* note 355, at 10-14.

[357] Even under multilateral sanctions, target nations are able to redirect trade to nonparticipating states, *id.* at 127, to minimize the economic effects of the sanctions. Wallensteen, *Characteristics of Economic Sanctions*, 5 J. PEACE RES. 248, 262 (1968).

[358] EAA '69, Pub. L. No. 91-184, § 4(b), 83 Stat. 841 (codified at 50 U.S.C. app. § 2403(b)(1) (1976)) (expired 1979).

[359] *See id.*; Equal Export Opportunity Act, Pub. L. No. 92-412, § 104(a)(2), 86 Stat. 644 (1972) (expired 1979); Export Administration Amendments of 1977, Pub. L. No. 95-52, § 103(a)(3), 91 Stat. 235 (expired 1979).

[360] EAA '69, Pub. L. No. 91-184, § 4(b)(2)(B), 83 Stat. 841, *as amended by* Export Administration Amendments of 1977, Pub. L. No. 95-52, § 103(a)(3), 91 Stat. 235 (codified at 55 U.S.C. app. § 2403(b)(2) (1976)) (expired 1979).

[361] *Id.*

[362] Berman & Garson, *supra* note 2, at 840-41.

[363] *See e.g.*, Senate EAA Hearings Part I, supra note 106, at 67-68 (statement of Juanita Kreps). Secretary Kreps described the results of a Commerce Department review of all unilaterally controlled categories on the Commodity Control List (the Department's report is reprinted in *House EAA Hearings Part I*, *supra* note 21, at 1137-60). As a result of that review, eight ECCN entries

EAA '69 exception has been questioned[364] and no wholly persuasive justification for it has been advanced,[365] a similar "safeguard" provision was included in EAA '79.[366]

Even this minimal requirement for consideration of foreign availability applied only to national security controls; prior to EAA '79, export control legislation had never required that foreign availability be considered in connection with foreign policy controls. President Carter was the first to address this anomaly: in a major 1978 statement on export policy, the President named foreign policy controls as one of the significant "domestic barriers to exports" and stated that "[w]eight will be given" to foreign availability in considering future controls.[367] Administration officials subsequently indicated that this policy was being implemented,[368] but their assertions were often little more than recitals of the President's general statement, usually accompanied by provisos that controls might still be imposed

---

were decontrolled, two were newly controlled, twenty-six were continued under the same controls, three were continued under reduced controls, and seven were continued under existing controls pending resolution of interagency disputes. *Senate EAA Hearings Part I, supra* note 106, at 68-77. *See also* UNITED STATES COMPTROLLER GENERAL, REPORT TO CONGRESS, EXPORT CONTROLS: NEED TO CLARIFY POLICY AND SIMPLIFY ADMINISTRATION 18 (1979) (confirming 38 unilateral controls) [hereinafter cited as COMPTROLLER GENERAL REPORT 1979]. Two months after Secretary Kreps' testimony, Assistant Secretary Weil reported that 43 entries were controlled unilaterally for national security purposes. *Senate EAA Hearings Part III, supra* note 116, at 15 (statement of Frank Weil). In June 1979, he reported a total of 73 unilateral controls. *Id.* at 16-26. The last figure (73) includes not only the national security controls previously referred to, but also certain nuclear controls imposed after Secretary Kreps' testimony, the foreign policy controls discussed herein, the "basket" entries implementing embargoes on Group Z nations, and certain miscellaneous controls. *Id.* Most of these unilateral controls remain in effect notwithstanding foreign availability.

[364] *See, e.g., Senate Foreign Policy Hearings, supra* note 119, at 293 (statement of National Machine Tool Builders' Association); *House EAA Hearings Part II, supra* note 119, at 138-43, 158-65 (statement of Rep. Fithian).

[365] *See, e.g.,* H.R. REP. NO. 95-190, 95th Cong., 1st Sess. at 8-9 (1977). The Carter Administration argued that controls imposed when foreign availability exists allow the government to monitor the destination of controlled items, *Senate EAA Hearings Part III, supra* note 116, at 34 (statement of Frank Weil), and to prevent their sale while negotiating with foreign supplier nations to eliminate foreign availability. *House EAA Hearings Part II, supra* note 119, at 140-43, 158-65 (remarks of Stanley Marcuss).

[366] *See* EAA '79, § 4(c), 50 U.S.C. app. § 2403(c) (Supp. III 1979); note 736 *infra* and accompanying text.

[367] Statement by the President on United States Export Policy, 14 WEEKLY COMP. OF PRES. DOC. 1631, 1633 (Sept. 26, 1978).

[368] *See, e.g., Senate EAA Hearings Part I, supra* note 106, at 188-90 (statement of Richard Cooper); *House EAA Hearings Part I, supra* note 21, at 141-52 (statement of William Root).

in spite of foreign availability.[369] Moreover, although comprehensive assessments of foreign availability had not been made for all foreign policy controls then in effect,[370] no restriction was limited or withdrawn.[371] Satisfied with the flexibility preserved by the "weight will be given" to foreign availability formula, the Administration proposed that this language be included in the legislation extending or replacing EAA '69,[372] thereby hoping to deflect congressional concern over foreign availability. In enacting EAA '79, Congress went beyond that formulation and imposed a foreign availability limitation on foreign policy controls similar to that previously applicable to national security controls.[373] This provision, however, seems to have had little effect so far.[374]

Analyzing the potential impact of foreign availability involves two separate inquiries: whether other nations produce items that can be economically substituted for those controlled, and if so, whether they will sell those items to the target nation.

With regard to the first inquiry, the situation is much different today than in the years immediately following World War II. Then, the United States was able to deny a wide range of goods and technologies to the Communist nations simply because it was the only source from which they were available, at least at reasonable prices. Now, however, the United States maintains a monopoly or even a substantial technological lead in only a very small number of goods and technologies.[375] The vast majority of goods, even goods involving relatively sophisticated technology, are available from a number of other suppliers in Western, Eastern, and neutral countries.[376] Moreover, most items of which the United States is the sole supplier are already controlled to all destinations for national security reasons.[377] It is thus very unlikely that the United States could impose new controls for foreign policy purposes without encountering a substantial degree of foreign availability.[378]

---

[369] *E.g.*, *Senate EAA Hearings Part III*, *supra* note 116, at 26 (statement of Frank Weil); *Senate EAA Hearings Part I*, *supra* note 106, at 188-90 (statement of Richard Cooper); *id.* at 79 (statement of Juanita Kreps); *House EAA Hearings Part I*, *supra* note 21, at 623 (statement of Frank Weil); *id.* at 935 (statement of Stanley Marcuss).

[370] *See Senate EAA Hearings Part III*, *supra* note 116, at 41 (statement of Frank Weil); *cf.* text accompanying note 315 *supra* (petroleum equipment controls).

[371] *Cf. Senate EAA Hearings Part II*, *supra* note 250, at 258 (statement of Machinery and Allied Products Institute) (commenting that no action had been taken by the Executive "to reduce the array of existing restrictions on U.S. exports"). The Administration seemed almost casually able to reconcile existing controls with the new policy. *See*, *e.g.*, *House EAA Hearings Part I*, *supra* note 21, at 142, 144, 146, 147 (statement of William Root). Foreign availability may, however, have been one of the reasons why licenses were not denied under the petroleum equipment controls until the change in policy of January 1980. *See*, *e.g.*, *Senate EAA Hearings Part I*, *supra* note 106, at 66 (statement of Juanita Kreps) (indicating that "no firm Administration conclusions were reached about whether the items made subject to control were available from foreign sources").

[372] *See* H.R. 3652, § 3(f), 96th Cong., 1st Sess. (1979), *reprinted in House EAA Hearings Part I*, *supra* note 21, at 900, 904. *Cf. House EAA Hearings Part II*, *supra* note 119, at 9 (statement of William Root).

[373] *See* notes 735-51 *infra* and accompanying text.

[374] The President, under EAA '79, extended current foreign policy controls on Dec. 29, 1979, 45 Fed. Reg. 1595 (1980), having first determined that the absence of each of the controls would be detrimental to American foreign policy notwithstanding foreign availability. *Id.* at 1596.

There are admitted difficulties in determining precisely the existence of foreign availability. Availability of the types of petroleum equipment controlled for export to the U.S.S.R. in 1978, for example, was hotly disputed.[379] Professor Huntington wrote that the United States was "virtually . . . the . . . sole supplier" of much of that equipment and that the Soviet Union was "dependent" on American supplies;[380] industry representatives countered that "all geophysical equipment currently in use by American oil companies [was] available overseas with no reduction in quality."[381] Such a disparity of views is possible primarily because of a lack of reliable information. Target nations such as the Soviet Union and South Africa are naturally secretive regarding the technologies they have been able to obtain.[382] Often the only sources of such information are the American intelligence agencies,[383] and they are frequently unable to obtain satisfactory data.[384] Friendly nations may also be unwilling to share commercially important information.[385] The Commerce Department itself has been criticized for lacking adequate resources to investigate foreign availability.[386]

---

[375] *See, e.g.*, *Senate EAA Hearings Part I*, *supra* note 106, at 5 (statement of Sen. Stevenson); *House EAA Hearings Part II*, *supra* note 119, at 5 (statement of Juanita Kreps); *House EAA Hearings Part I*, *supra* note 21, at 40 (statement of Dimitri Simes); *id.* at 45-46 (statement of Marshall Goldman); Adler-Karlsson, *International Economic Power: the U.S. Strategic Embargo*, 6 J. WORLD TRADE L. 501, 508 (1972). The industry position is well represented in *Senate Foreign Policy Hearings*, *supra* note 119, at 310 (statement of National Foreign Trade Council, Inc.); *id.* at 318 (statement of John James).

[376] Some primary products (particularly grain in the case of the United States) may not be fully available abroad because of inadequate and inelastic supplies, even when there are other suppliers. There may also be limited foreign availability of specially designed spare parts.

[377] Of the 73 unilaterally controlled entries on the Commodity Control List compiled by the Commerce Department in June 1979, *see* note 363 *supra*, the majority were "B" entries controlled for export to all destinations. Most entries controlled for export only to certain destinations were either foreign policy controls or basket entries. A few entries were controlled only for export to the Communist countries.

[378] This may in part explain the popularity of changes in licensing policy and individual license denials, affecting items already controlled for national security reasons, as tools of foreign policy. *See* notes 321-43 *supra* and accompanying text.

[379] The debate is concisely summarized in CONGRESSIONAL RESEARCH SERVICE, LIBRARY OF CONGRESS, POLICY CONSIDERATIONS ON EXPORT LICENSING 1979, *reprinted in House EAA Hearings Part I*, *supra* note 21, at 914, 926-29.

[380] Huntington, *supra* note 317, at 76.

Disagreement is also possible because there is no accepted definition of "availability." Executive branch officials have argued that American controls should not be discarded when foreign substitutes appear to be of lesser quality, available in smaller quantities, or the like,[387] although there is no agreement even within the executive branch on the proper standard of comparability.[388] Exporters argue that foreign availability exists whenever a target nation can satisfy its needs with a foreign substitute at an acceptable price.[389] A sophisticated analysis of foreign availability under the instrumental rationale might reject these extreme positions, attempting first to calculate the costs to the target nation of shifting to the available foreign substitutes and then to estimate the likelihood that imposing costs of that magnitude would lead to the desired political results. Such precision, however, is probably unattainable.[390]

---

[381] *House EAA Hearings Part I*, *supra* note 21, at 68 (statement of James Giffen).

[382] For an interesting example of the difficulties involved in determining whether a particular item has been obtained by the target and whether it is available from another supplier nation, *see generally Export Licensing: Foreign Availability of Stretch Forming Presses, Hearing Before the Subcomm. on International Economic Policy and Trade of the House Comm. on International Relations* (Pt. I), 96th Cong., 1st Sess. (Comm. Print 1977) [hereinafter cited as *Export Licensing Hearings*].

[383] *Export Licensing Hearings*, *supra* note 382, at 30 (statement of Rauer Meyer).

[384] *See* Comptroller General Report 1979, *supra* note 363, at 28.

[385] *Export Licensing Hearings*, *supra* note 382, at 28-31 (statements of William Barraclough, Rauer Meyer) (difficulties in obtaining information from France).

[386] *See House EAA Hearings Part I*, *supra* note 21, at 259-60 (statement of J. Kenneth Fasick); Comptroller General Report 1979, *supra* note 363, at 31. Commerce has initiated measures to improve its investigative capabilities. *See House EAA Hearings Part I*, *supra* note 21, at 934-35 (statement of Stanley Marcuss). EAA '79 mandates further improvement.

[387] *See House EAA Hearings Part I*, *supra* note 21, at 92 (statement of Stanley Marcuss); Comptroller General Report 1979, *supra* note 363, at 28.

[388] Comptroller General Report 1979, *supra* note 363, at 5. The Defense Department has a clear and quite conservative definition, *see House EAA Hearings Part II*, *supra* note 119, at 16 (statement of Ellen Frost). Such a definition is more appropriate for national security controls: the products and technologies controlled have military applications, and whatever damage they might do to American security is done if they are exported. In the case of foreign policy controls, the United States will normally have other opportunities to influence a target nation if a questionable export is allowed.

[389] *See Senate Foreign Policy Hearings*, *supra* note 119, at 57 (statement of C. William Verity); *House EAA Hearings Part I*, *supra* note 21, at 971 (letter

With many foreign policy controls, it is hardly necessary to engage in this detailed analysis. With an embargo like that of Uganda or of the South African military and police, for example, foreign availability unquestionably exists for all but the most sophisticated items. Virtually all crime detection equipment is freely available elsewhere. In 1980, the United States embargoed all exports for use at the Moscow Olympics,[391] but again foreign substitutes were readily available for most of the prohibited exports. The instrumental rationale simply cannot justify controls imposed in the face of such unquestioned foreign availability.[392]

Even given the decline of the United States' position as a

---

from John Chambers). *See also id.* at 43 (statement of Dimitri Simes). In the case of the petroleum equipment controls, it has been suggested that the Soviets could not only "make do" with less advanced foreign substitutes, but might actually be able to use them more effectively for most purposes than American equipment. CONGRESSIONAL RESEARCH SERVICE, *supra* note 379, *reprinted in House EAA Hearings Part I*, *supra* note 21, at 928.

[390] *See* CONGRESSIONAL RESEARCH SERVICE, *supra* note 379, *reprinted in House EAA Hearings Part I*, *supra* note 21, at 914, 926-29.

[391] *See* note 802 *infra* and accompanying text.

[392] One commentator argues that a presumption of effectiveness should apply in evaluating controls intended to further human rights; a "burden of proof" should be placed on those who would argue ineffectiveness due to foreign availability. Brown, ". . . *in the National Interest*," in HUMAN RIGHTS AND U.S. FOREIGN POLICY 161, 167-68 (P. Brown & D. MacLean eds. 1979).

A burden of proof scheme would be difficult to administer under the present system, in part because EAA '79 exempts new controls from the Administrative Procedure Act; controls may thus be implemented without prior notice or opportunity for comment. EAA '79, § 13(a), 50 U.S.C. app. § 2412(a) (Supp. III 1979). The recent practice of the Commerce Department has been to issue regulations with immediate effectiveness but in interim form, allowing an opportunity for post-imposition public comment, *see, e.g.*, 45 Fed. Reg. 1595 (1980) (to be codified in scattered sections of 15 C.F.R.). This practice still does not permit anyone outside the executive branch to make a case for foreign availability before new controls are imposed. Even an opportunity for prior comment would not give a fair opportunity to carry a burden of proof, since there would be no impartial decisionmaker; comments are addressed to those who proposed the control. At the licensing stage, exporters rarely play any greater part in the decision process. *See* COMPTROLLER GENERAL REPORT 1978, *supra* note 32, at 9-12.

More importantly, foreign availability is the prevailing condition in the markets for most products. If a burden of proof is to have any factual justificasupplier in world markets, instrumental controls could be effective if foreign supplier nations were to cooperate in enforcing them. Since the late 1940s, the United States has sought the cooperation of foreign nations in enforcing national security controls through the informal organization known as COCOM.[393] The members of COCOM—Japan and the NATO nations (except Iceland)—first agree on broad categories of strategic goods and technologies to be kept from the U.S.S.R. and other Communist nations and then prepare lists of specific items within these categories.[394] Members agree to control the export of items on the lists; a nation wishing to permit the export of a controlled item must request a COCOM exception.[395]

In recent years, however, COCOM has been viewed as ineffective.[396] Europe and Japan have long advocated reductions in product coverage,[397] and the United States has lost the power to enforce cooperation.[398] Further, COCOM has its own foreign

---

tion, it should be placed on those whose position rests on the exceptional situation—those who propose instrumental controls.

The idea of placing a burden of proof on the controllers has been discussed in Congress, *see, e.g.*, *House EAA Hearings Part I*, *supra* note 21, at 85 (statement of Rep. Bingham), frequently in connection with proposals to legislate a "right to export." *See* S. REP. NO. 96-169, *supra* note 31, at 3-4; *cf.* CONGRESSIONAL RESEARCH SERVICE, *supra* note 379, at 914, 928. No such "right" has yet been enacted, but EAA '79 moves in that direction by emphasizing that export controls are to be considered exceptional measures. *See* notes 724-32 *infra* and accompanying text. Part VI of this Article considers procedures by which something resembling a burden of proof might be placed on the Executive.

[393] "COCOM" is a military-style acronym for "Coordinating Committee." *See* Berman & Garson, *supra* note 2, at 834-42; SPECIAL REPORT OF THE PRESIDENT ON MULTILATERAL EXPORT CONTROLS, *reprinted in Export Administration Act: Agenda for Reform, Hearing Before the Subcomm. on International Economic Policy and Trade of the House Comm. on Foreign Relations*, 95th Cong., 2d Sess. 52 (1978) [hereinafter cited as COCOM REPORT].

[394] COCOM REPORT, *supra* note 393, at 52.

[395] *Id.* at 52-54. *See* COMPTROLLER GENERAL REPORT 1979, *supra* note 363, at 10-13.

[396] *See, e.g.*, H.R. REP. NO. 95-190, *supra* note 37, at 20; *Export Licensing Hearings*, *supra* note 382, at 31 (statement of Rep. Bingham).

[397] *See* COMPTROLLER GENERAL REPORT 1979, *supra* note 363, at 8; Berman & Garson, *supra* note 2, at 840-41.

[398] When COCOM was formed, the main American tool for inducing cooperation within the organization was the Mutual Defense Assistance Control Act of 1951 (Battle Act), Pub. L. No. 213, §§ 101-105, 202-203, 301-335, 65 Stat. 646 (repealed 1979), which authorized an Administrator in the State Department to terminate all military and economic assistance to any nation that did not agree to cooperate with the American strategic embargo. *See* COMPTROLLER GENERAL REPORT 1979, *supra* note 363, at 7-8; G. ADLER-KARLSSON, *supra* note 92, at 27-28; Berman & Garson, *supra* note 2, at 836-38. Leverage over the COCOM nations based on American aid has long since disappeared. *Id.* In 1979, the Battle Act was repealed, EAA '79, § 17(e), 50 U.S.C. app. § 2416(e) (Supp. III 1979), on the ground that it was obsolete. *See* S. REP. NO. 96-169, *supra* note 31, at 15-16. In the early days of COCOM, informal pressures based on American technological

availability problem: nonmember nations are now able to offer products and technologies previously available only through COCOM.[399] Finally, United States officials charge that Europe and Japan have been more lenient in interpreting agreed standards and more lax in enforcing them,[400] in spite of a relatively high degree of consensus on the importance of COCOM to national security.[401]

Foreign policy controls enjoy no equivalent consensus—indeed, most other Western industrial nations tend to avoid politically motivated controls on trade.[402] Virtually no Western industrial nation has joined the United States in any of the foreign policy controls dicussed in Part III of this Article;[403] indeed, other Western nations have usually moved to fill the commercial void resulting from American controls.[404] Lack of

---

superiority were also used to obtain cooperation. G. Adler-Karlsson, *supra* note 92, at 51. Such influence, too, is now largely unavailable. Thus, there are no effective sanctions that the United States can impose against a nation that refuses to abide by the COCOM embargo lists. COCOM Report, *supra* note 393, at 54.

[399] *See* H.R. Rep. No. 95-190, *supra* note 37, at 20; *Senate Foreign Policy Hearings*, *supra* note 119, at 265 (statement of Machinery and Allied Products Institute) (non-COCOM competitors include Sweden, Austria, and Switzerland).

[400] COCOM Report, *supra* note 393, at 54-55; H.R. Rep. No. 95-190, *supra* note 37, at 20. *See also Senate EAA Hearings Part III*, *supra* note 116, at 27-28 (statement of Frank Weil). On the other hand, the United States has in recent years submitted almost half of all COCOM exceptions requests, leading to similar complaints by the other members. COCOM Report, *supra* note 393, at 53-54.

[401] *See* COCOM Report, *supra* note 393, at 55.

[402] *See Senate EAA Hearings Part I*, *supra* note 106, at 56 (statement of Juanita Kreps); *id.* at 208-10 (statement of Richard Cooper); *House EAA Hearings Part I*, *supra* note 21, at 191 (statement of William Root). Even with consensus at a general ethical or political level, as in the case of South Africa, Rhodesia, or Cuba, there may be little agreement on precise goals or the appropriate course of action. *See* M. Doxey, Economic Sanctions and International Enforcement 94-96 (2d ed. 1980); L. Kapungu, The U.N. and Economic Sanctions Against Rhodesia 40 (1973); H. Strack, Sanctions: The Case of Rhodesia 30 (1978).

[403] *See House EAA Hearings Part I*, *supra* note 21, at 142, 146-47 (statement of William Root) (summarizing American foreign policy controls with reference to lack of foreign cooperation in each). Although American controls aimed at Iran and at the U.S.S.R. after the invasion of Afghanistan have received greater cooperation (in part due to intense United States pressure), cooperation has hardly been total, and effectiveness remains at best an open question.

[404] *See Senate EAA Hearings Part III*, *supra* note 116, at 27-29 (remarks of Sen. Stevenson and Frank Weil) (French sale of computer to TASS replacing that denied by United States). Cooperation with non-Western nations is even less common. *See* Schreiber, *Economic Coercion as an Instrument of Foreign Policy*, 25 World Politics 387, 394-405 (1973) (American embargo of Cuba led to reorientation of trade to Communist nations).

international cooperation has similarly plagued programs of multilateral economic sanctions.[405]

Studies of the United Nations embargo of Rhodesia reveal an additional dimension of the foreign availability problem: illicit trade. Even with nearly universal participation in the embargo, Rhodesia was able to "prosper" under sanctions for some ten years[406] and was able to purchase virtually anything it desired during the entire period of sanctions.[407] Much of its trade was with (or through) Portugal, its colonies, and South Africa, countries that did not join in the sanctions,[408] but "unacknowledged" or clandestine trade came to account for over half of Rhodesia's exports and imports.[409]

Some governments seemed unable to stop illicit trade despite the best of intentions due to a lack of bureaucratic resources,[410] insufficient legal authority, or similar problems.[411] Some breaches of sanctions, however, resulted from deliberate governmental decisions such as the Byrd Amendment, which permitted the United States to import Rhodesian chrome "in blatant disregard of [its] treaty undertakings."[412] Still other governments were actively involved in clandestine trade,[413] the now classic example being the complex machinations used to deliver petroleum to Rhodesia in violation of the embargo and in the face of a naval blockade.[414]

---

[405] *See, e.g.*, Taubenfeld & Taubenfeld, *The "Economic Weapon": The League and the United Nations*, 1964 PROC. AM. SOC'Y INT'L L. 183, 194-85, 187 (describing lack of cooperation in the League of Nations embargo of Italy in 1935 and the United Nations embargo of the People's Republic of China in the 1950s).

[406] H. STRACK, *supra* note 402, at 237.

[407] D. LOSMAN, *supra* note 355, at 98-99. Strack concludes that the economic sanctions against Rhodesia were less successful than the political and other types of sanctions employed, H. STRACK, *supra* note 402, at 247, while Losman finds that the controls on exports to Rhodesia were the least effective of the economic sanctions. D. LOSMAN, *supra* note 355, at 98-99. The major limit on Rhodesia's imports under sanctions was a shortage of foreign exchange. *Id.*

[408] South Africa is Rhodesia's neighbor to the south, and Mozambique, a colony of Portugal when sanctions began, lies to the north and east. Since Rhodesia is landlocked, the assistance of these two states was crucial to its survival. *See* H. STRACK, *supra* note 402, at 241-43. Indeed, Strack concludes that the independence of Mozambique in 1975 was the most important development in finally settling the Rhodesian crisis, in that after independence Mozambique joined in the sanctions and began to act as a base for guerilla warfare. *Id.* at 31, 237-38, 252.

[409] H. STRACK, *supra* note 402, at 129. For an overview of "sanctions-breaking" activity and techniques, *see id.* at 129-41; [illegible] KAPUNGU, *supra* note 402, at 108-13; P. KUYPER, THE IMPLEMENTATION OF INTERNATIONAL SANCTIONS: THE NETHERLANDS AND RHODESIA 99-121 (1978); R. LILLICH & F. NEWMAN, *supra* note 171, at 438-50.

[410] *See* UNITED STATES COMPTROLLER GENERAL, IMPLEMENTATION OF SANCTIONS AGAINST RHODESIA 32 (1977) [hereinafter cited as COMPTROLLER GENERAL REPORT 1977].

[411] *See* P. KUYPER, *supra* note 409, at 99-121. Kuyper's work is a detailed case study of the implementation of the Rhodesian sanctions by the Netherlands, a strong supporter of sanctions in the United Stations.

In short, international precedents confirm the American experience: efforts to achieve international cooperation in trade controls are unlikely to eliminate foreign availability. If foreign availability cannot be eliminated, instrumental trade controls are likely to fail.

b. Import Substitution

Just as export controls will be ineffective if the target nation can obtain comparable items from other suppliers, they will also be ineffective if the target can develop comparable items itself.[415] Large, economically diverse and sophisticated nations, such as the U.S.S.R.,[416] are most adept at import substitution,[417] but even less sophisticated nations like Rhodesia can successfully develop substitutes. It is therefore rarely accurate to say that export controls "deny" essential goods or technology to a target nation. Even if alternative supplies are unavailable, controls can normally only postpone the time when the target nation obtains the controlled items,[418] while imposing the costs of developing substitutes.[419] These costs may in time[420] or in special situations[421] be sufficiently burdensome to lead to political concessions by the target nation, but judging from experience, such cases will be rare.

---

[412] Diggs v. Schultz, 470 F.2d 461, 466 (D.C. Cir. 1972), *cert. denied*, 411 U.S. 931 (1973). The Byrd Amendment to the Strategic and Critical Materials Stock Piling Act, Pub. L. No. 92-156, § 503(2), 85 Stat. 427 (1971), forbade the President to regulate or prohibit the importation from a non-Communist nation of any product determined to be strategic and critical under that Act so long as it was not illegal to import the same product from a Communist nation. Although the amendment is still in effect, it ceased to apply to Rhodesia in 1977 by reason of an amendment, adopted with the strong support of the President, to the United Nations Participation Act, Pub. L. No. 95-12, 91 Stat. 22 (1977) (amending 22 U.S.C. § 287c (1979)). For a case study of the amendment, see H. STRACK, *supra* note 402, at 146-64.

[413] *See* R. LILLICH & F. NEWMAN, *supra* note 171, at 439-43.

[414] *Id.* at 449-50. *See Political Developments in Southern Rhodesia: Hearing Before the Subcomm. on Africa of the House Comm. on International Relations*, 95th Cong., 1st Sess. 12-63 (1977). The involvement of British officials in these transactions (Britian was the sponsor of the sanctions) created a scandal in the United Kingdom. R. LILLICH & F. NEWMAN, *supra* note 171, at 449-50.

[415] *See* M. DOXEY, *supra* note 402, at 110; D. LOSMAN, *supra* note 355, at 126; Taubenfeld & Taubenfeld, *supra* note 405, at 191.

[416] The U.S.S.R. could in time probably develop any product the West sought to deny it, if the product were important enough, and the U.S.S.R. has done precisely that with many forms of technology. *See Senate Foreign Policy Hearings, supra* note 119, at 15 (statement of George Ball); *id.* at 57 (statement of C. William Verity, Jr.); *id.* at 243 (statement of George Helland); Holzman & Portes, *The Limits of Pressure*, 32 FOREIGN POL'Y 80, 87-89 (1978).

[417] D. LOSMAN, *supra* note 355, at 126; Galtung, *supra* note 344, at 385-86; Kiser, *What Gap? Which Gap?*, 32 FOREIGN POL'Y 90, 91 (1978).

Forcing a target nation to develop import substitutes may actually confer a benefit. American export controls have forced the U.S.S.R. to develop certain technologies for which it had been dependent on the United States;[422] the 1980 grain embargo, similarly, is said to have had "an important stimulative effect on Soviet agricultural policy . . . ."[423] Rhodesia developed industries under sanctions that might not otherwise have become established for decades.[424] In such cases, sanctions result in a threefold loss for the countries imposing sanctions: the desired political concession is not made, the opportunity for future sales of the controlled item is lost, and whatever influence might have flowed from the target nation's dependence on the item disappears.[425]

---

[418] *House EAA Hearings Part I, supra* note 21, at 84 (remarks of Rep. Bingham); Holzman & Portes, *supra* note 416, at 87-89. The preservation of "lead times" in the development of technologies with military applications is the acknowledged aim of American national security controls. *See House EAA Hearings Part I, supra* note 21, at 161 (statement of Ellen Frost).

[419] *See* D. LOSMAN, *supra* note 355, at 18, 118-19, 127; H. STRACK, *supra* note 402, at 86-97. Among the possible costs are the following: gains from trade on the basis of comparative advantage may be lost, forced diversification may lead to reductions in economies of scale, resources may have to be diverted from other projects, and inefficiencies may develop from the lack of foreign competition. The greatest costs will result from controls on items for which demand in the target nation is relatively inelastic—spare parts, certain raw materials—and for which substitution is difficult—petroleum being the prime example. D. LOSMAN, *supra* note 355, at 14-16, 133.

[420] The toll taken by the sanctions on Rhodesia, for example, did not become serious for some years. *See* H. STRACK, *supra* note 402, at 96-97.

[421] Professor Huntington argues that the 1978 controls on petroleum equipment exports were designed to take advantage of such a situation. Huntington, *supra* note 317, at 76.

[422] *See* note 416 *supra; Senate Foreign Policy Hearings, supra* note 119, at 10 (statement of George Ball); *id.* at 291 (statement of National Machine Tool Builders Association). *See also Senate EAA Hearings Part I, supra* note 106, at 104-05 (statement of Sen. Stevenson).

[423] Brand, *Russia's Private Farms Show State-Run Ones How to Raise Output*, Wall St. J., Mar. 3, 1981, at 1, col. 1; Brand, *Soviets See Pluses in Grain Embargo*, Wall St. J., Feb. 26, 1981, at 27, col. 2; Medvedev, *The Grain Embargo: I*, N.Y. Times, Feb. 10, 1981, at 21, col. 1.

[424] H. STRACK, *supra* note 402, at 15; D. LOSMAN, *supra* note 355, at 111-12, 126-27.

[425] *See* Bingham & Johnson, *supra* note 117, at 917.

3. *The Likelihood of Instrumental Success*

Even if export controls can be designed to impose significant economic costs on a target nation, the likelihood that they will be politically successful remains small. The extensive economic sanctions brought to bear on Cuba, Rhodesia, and other nations, for example, have imposed enormous costs without achieving the desired results.[426] Studies of these sanctions contradict an assumption basic to the instrumental rationale—that target governments respond rationally to economic pressure. These studies demonstrate that resistance to sanctions is also compelled by less rational forces like personal and national pride, and that a target nation will often endure substantial sacrifice rather than accede to external demands.[427] They also demonstrate that a target nation may have a startling ability to resist economic deprivation.[428] These findings are discussed below. For the sake of clarity, the discussion is divided somewhat artificially into political and economic categories.

a. Political Factors

Two factors that influence the target's decision to resist are particularly relevant to United States export controls. First, the value to the target government of the policy or conduct under attack fundamentally affects both its logical and emotional responses.[429] When the target believes strongly in its course of conduct, sanctions may lead to a strengthening of the will to resist rather than the capitulation predicted by the instrumental rationale.[430] The importance of this factor casts doubt on the efficacy of many American export controls—such as those intended to promote regional stability in the Middle East and to oppose Middle East terrorism—which seek to influence deeply held values. Some commentators believe that changes within a target nation's society may be perceived as more fundamental than changes in external relations.[431] To the extent this is true, it also casts doubt on controls aimed at changing human rights practices in the Soviet Union, South Africa, and elsewhere.

---

[426] *See* L. KAPUNGU, *supra* note 402, at 127-28; D. LOSMAN, *supra* note 355, at 43-44, 125; H. STRACK, *supra* note 402, at 237.

[427] *See House EAA Hearings Part I, supra* note 21, at 20 (statement of George Ball) ("no political leader of a major country can ever admit, either by word or action, that he is taking instructions from the U.S. Government").

[428] Galtung finds that "hidden forces" are released in the target. Galtung, *supra* note 344, at 409.

[429] *Cf.* M. MCDOUGAL & P. FELICIANO, *supra* note 1, at 33 (quoting Clausewitz: "The smaller the sacrifice we demand from an adversary, the slighter we may expect his efforts to be to refuse it to us." *Id.* at n.92.)

[430] Galtung, *supra* note 344, at 389; *cf.* Doxey, *The Rhodesian Sanctions Experiment*, 1971 Y.B. WORLD AFF. 142, 157-59. Wallensteen's study of twentieth century economic sanctions found that most sanctions programs sought changes in policies that were fundamentally important to the target nation, and that target governments bolstered their internal support by stressing the challenge to fundamental values. Wallensteen, *supra* note 357, at 256-57, 262.

Second, sanctions imposed in public view may force the target's government to resist in order to avoid public embarrassment and to demonstrate its independence.[432] Although even Professor Huntington acknowledges the dangers of publicity and urges a policy of "quiet leverage" applied "subtly and discreetly rather than openly and arrogantly,"[433] such advice is difficult to follow.[434] New validated license controls are highly visible, whether imposed by the executive branch and announced in the Export Administration Bulletin and the Federal Register or imposed by Congress. Huntington urges the extension of validated license control over a larger number of products, even with no present intention of prohibiting their export, so that the Executive can in the future prohibit exports more easily, and presumably more discreetly, through license denials.[435] Even individual licensing decisions, however, tend to become public knowledge through the complaints of exporters and the efforts of the trade and general press. More importantly, any significant extension of validated license controls would place a greater burden on the already strained resources of the export control bureaucracy; would increase the expense, delay, and uncertainty with which the exporting community must contend, even if all licenses were granted; and would run counter to the efforts of Congress to increase the amount of information flowing to the public about control policy.[436] These costs greatly outweigh any benefit that might be gained from reducing the publicity given to export controls.

---

[431] *See* Wallensteen, *supra* note 357, at 256-57, 262.

[432] *House EAA Hearings Part I, supra* note 21, at 20 (statement of George Ball); M. DOXEY, *supra* note 402, at 121-22; Sirkin, *Can a Human Rights Policy Be Consistent?*, in HUMAN RIGHTS AND U.S. FOREIGN POLICY 199, 202 (P. Brown & D. MacLean eds. 1979).

[433] Huntington, *supra* note 317, at 72.

[434] Some of the controls discussed in Part III of this Article seem to have been announced as publicly as possible—in a presidential statement, for example—in pursuit of various secondary goals. More recent sanctions aimed at the U.S.S.R. and Iran were, if anything, announced with even greater fanfare than any controls discussed in Part III. *See* notes 802-10 *infra* and accompanying text.

[435] Huntington, *supra* note 317, at 76. Again, the petroleum equipment controls embody Huntington's recommendations. *See* note 351 *supra* and accompanying text.

[436] *See* note 765 *infra* and accompanying text.

Economic sanctions may also strengthen a target government's ability to mobilize effective resistance to external pressure once a decision to resist has been made. Popular support for the regime may increase, giving it a stronger hand in resisting the sanctioners' demands.[437] The very economic sacrifices the target society must endure may boost morale and political cohesion.[438] Target leadership has in some cases increased political unity by skillful internal propaganda that paints the government as the unyielding defender of national interests,[439] using the sanctions as a political rallying point.[440] Such political measures, as well as the economic mobilization needed to resist sanctions, may incidentally tend to strengthen the conservative forces in a society and make its government more authoritarian, to the possible detriment of the target nation's population.[441]

b. Economic Factors

Although some nations are more vulnerable than others to the economic effects of sanctions,[442] any target nation can take steps to minimize and absorb the economic costs imposed by sanctions without acceding to the demands of the sanctioners.[443] A target nation can also impose costs upon the sanctioners as part of its defense. A major reason for the failure of past sanctions programs has been advance preparation by the target on all of these fronts.[444] The methods of preparing for economic warfare have become so widely known in the twentieth century that they can be referred to as "standard."[445] They include stockpiling, rationing, developing domestic substitutes, stimulating diversification, and developing both overt and illicit alternative supply sources.[446] Countries that expect to be the targets of new or expanded American foreign policy contro can institute such measures in anticipation.

---

[437] Strack, for example, notes a "consensus among scholars" that economic sanctions are not only ineffective instrumentally "but may well be dysfunctional or counterproductive . . . in the sense that they tend to increase the internal political cohesion of the target-state and increase its will to resist." H. STRACK, *supra* note 402, at xi-xii.

[438] Galtung, *supra* note 344, at 389, 394; Taubenfeld & Taubenfeld, *supra* note 405, at 191 (finding that the effort to influence a target by expressing disapproval of its conduct through sanctions "seems uniformly to have boomeranged" by increasing morale). *Cf.* M. DOXEY, *supra* note 402, at 120-23 (external threat may induce heightened sense of solidarity).

[439] Galtung, *supra* note 344, at 395. In the early years of the Rhodesian sanctions the Smith government rallied support by casting itself as the defender of national interests against outside pressure, unyielding to foreign demands. *See* Doxey, *supra* note 430, at 157-59. Externally, manipulation of the target's image can weaken the resolve of sanctioning states. *See* H. STRACK, *supra* note 402, at 249-50.

[440] The phrase is from Schreiber, *supra* note 404, at 404, describing Fidel Castro's use of American sanctions to make himself "look like a hero" to his people and to divert attention from pressing internal problems.

[441] *House EAA Hearings Part I, supra* note 21, at 54 (statement of Thomas Wolfe). Wallensteen found that target governments became both more authoritarian and more stable during sanctions. Wallensteen, *supra* note 357, at 255-58, 264. In the case of Rhodesia, Kapungu finds that the sanctions welded together the conservative elements of the society into a strong alliance, L. KAPUNGU, *supra* note 402, at 128, while Strack finds that in 1975 the Rhodesian Front Party was "never stronger" in spite of ten years of sanctions. H. STRACK, *supra* note 402, at 237. Some of the methods used by the government to consolidate its political position are described in L. KAPUNGU, *supra* note 402, at 103-08. *Cf.* D. LOSMAN, *supra* note 355, at 128-30 (detailing potential adaptive adjustments within target states).

[442] The most important factors in determining the vulnerability of a target

Once sanctions are imposed, the target can minimize its costs through trade reorientation, import substitution, and similar measures. When sanctions are not complete and universal, their impact will often decrease over time as new economic patterns become established.[447] The target may receive substantial economic assistance from allies or other nations opposed to the program of sanctions, leading to new, supportive political relationships.[448]

A particularly pernicious variant of cost minimization is

---

economy to export controls are generally thought to be the importance to the target nation's economy of the following factors: imports from the sanctioning states, imports of the items controlled (especially the elasticity of demand for imported products) and the economic sectors that depend on imports. *See* L. KAPUNGU, *supra* note 402, at 44-47; D. LOSMAN, *supra* note 355, at 14-16, 133; Galtung, *supra* note 344, at 385-86.

[443] The only strategies available to a target nation are (1) to take advantage of foreign availability by restructuring its trade patterns away from the sanctioning states, or by developing illicit trade; (2) to restructure its own economy to develop substitutes for controlled imports; and (3) to absorb the costs imposed by the sanctions. *See* D. LOSMAN, *supra* note 355, at 126-28; Galtung, *supra* note 344, at 387-88; MacDonald, *Economic Sanctions in the International System*, 1969 CAN. Y.B. INT'L L. 61, 85-86.

[444] *See* L. KAPUNGU, *supra* note 402, at 130; H. STRACK, *supra* note 402, at 22-23.

[445] M. McDOUGAL & P. FELICIANO, *supra* note 1, at 328.

[446] *Id.*; M. DOXEY, *supra* note 402, at 119-22; Taubenfeld & Taubenfeld, *supra* note 405, at 191. Rhodesia's preparations are described in L. KAPUNGU, *supra* note 402, at 108-21.

[447] D. LOSMAN, *supra* note 355, at 14-16, 45; Taubenfeld & Taubenfeld, *supra* note 405, at 195. *Cf.* Galtung, *supra* note 344, at 410-11 (whether lack of universality accounts for failure of multilateral sanctions programs can only be assessed by reference to individual cases).

[448] *See, e.g.*, Schreiber, *supra* note 404, at 394-405 (describing assistance rendered to Cuba by Soviet Union). *But cf.* H. STRACK, *supra* note 402, at 252-53 (target's maintenance and development of international relationships does not necessarily lead to the acquisition of legitimacy from other countries).

the allocation of costs to powerless sectors of the target nation's society. Rhodesia, for example, had a dual economy during the sanctions period: most Africans lived near subsistence while most Europeans lived at a more prosperous level.[449] The Rhodesian government was able to deflect many of the economic burdens resulting from sanctions—especially unemployment—onto the African population, keeping the white population at high levels of employment through subsidies and other measures.[450]

Research has demonstrated that target nations can absorb the irreducible economic costs of sanctions and can even prosper by mobilizing their economies to a degree only possible with the heightened morale and political unity of a crisis. Some sixteen years ago, Taubenfeld perceptively summarized for the American Society of International Law the potential of economic mobilization in this setting,[451] observing that techniques first learned in wartime and since practiced in planned economies may allow a target to refuse the demands of its sanctioners, at least for some time, even in the face of "universal, perfectly applied" economic sanctions. Rationing and voluntary sacrifice can reduce demand. To increase production, the target nation can utilize underemployed capital equipment, land, and labor to full capacity, resulting in nearly costless production increases. In the crisis atmosphere it can often find "slack in the system" that enables it to expand the productivity of land and labor beyond normal capacity. It can extend its capital stock beyond its normal life through deferral of maintenance and similar techniques.[452] Such measures, coupled with the protection from import competition which sanctions incidentally provide, may lead to something of an economic boom.[453]

The populations of target nations have been willing to make the sacrifices necessary for the success of these tactics,[454] reflecting the combined operation of the political factors discussed above and the economic techniques just discussed. The actions taken by the government to mobilize the economy, the psychological response to external pressure, and the sacrifices incurred in resisting sanctions all contribute to a level of morale and political unity that make successful mobilization possible.

---

[449] *See* M. Doxey, *supra* note 402, at 76.

[450] L. Kapungu, *supra* note 402, at 116-18; D. Losman, *supra* note 355, at 112-15; H. Strack, *supra* note 402, at 237.

[451] *See* Taubenfeld & Taubenfeld, *supra* note 405, at 188.

[452] *Id.* at 188-92.

[453] There often is a second boom following the end of sanctions because built-up demand must be satisfied and extended capital stock must be replaced. *Id.*; M. Doxey, *supra* note 402, at 110-11.

[454] D. Losman, *supra* note 355, at 128; Galtung, *supra* note 344, at 391-98; MacDonald, *supra* note 443, at 85-86.

Most targets will also be able to retaliate economically by defaulting on government and private debts, freezing the assets of the sanctioners and their citizens, or expropriating property.[455] A target that trades actively with the sanctioners—especially if it supplies vital raw materials—can impose substantial economic costs on them through trade controls of its own.[456] Any target can also retaliate by taking action against citizens of the sanctioners within its borders.[457] Even when economic counter-measures are not available, powerful nations can respond with political and military moves,[458] while weak nations may be able to mobilize international public opinion against the sanctioners by protesting interference in their affairs by stronger powers.[459]

The best example of target resistance is again the case of Rhodesia.[460] The Rhodesian embargo is in many ways the most favorable precedent for the use of multilateral economic sanctions: the level of participation and the endurance of the sanctioners were particularly impressive,[461] and the embargo at least contributed to the final settlement of the crisis.[462] The fact remains, however, that Rhodesia survived over a decade of nearly universal embargo before beginning to implement any of the social or political changes sought by Britain and the international community.[463] It is true that its survival depended in large part on strategically located nonparticipants and on illicit trade,[464] but much of its success—which may be deplored, but cannot be denied—must be credited to its own ability to restructure its trade, diversify and mobilize its economy, and otherwise adapt to the pressures created by sanctions.[465] Indeed, some analysts feel that sanctions alone would never have led to capitulation by Rhodesia's white government; success came only with the escalating guerilla war.[466] Cuba likewise illustrates the ability of a target to resist. It has absorbed even greater economic punishment from the American embargo than Rhodesia did from sanctions[467] and its economy has struggled. With substantial help from the Soviet Union, however, it too has survived with its policies unchanged and now poses even greater challenges to American foreign policy.[468]

---

[455] *See* M. Doxey, *supra* note 402, at 120; MacDonald, *supra* note 443, at 84. Losman and Strack both note that Rhodesia's counter-sanctions in the financial area were more effective than the financial sanctions imposed upon Rhodesia, at least initially. D. Losman, *supra* note 355, at 105; H. Strack, *supra* note 402, at 97-98. Rhodesia regularly reminded sanctioning states of the counter-sanctions it could impose. H. Strack, *supra* note 402, at 249-50.

[456] The United States for example, depends heavily on imports for many essential metals and minerals. *See, e.g.*, Office of Special Trade Representative, Twenty-Third Annual Report of the President on the Trade Agreements Program 140-41 (1978) (Table 33).

[457] The impact of hostage-taking, albeit not in the context of retaliation for economic sanctions, was demonstrated by the United States-Iranian crisis in 1980.

[458] Such responses were of concern in relation to the controls on exports of petroleum equipment to the Soviet Union. *See* note 320 *supra* and accompanying text.

[459] *See* Doxey, *supra* note 430, at 123. A sanctioning state will ordinarily evaluate the possible retaliatory moves of the target before initiating sanctions and will not implement them if the likely cost seems too high. Such considerations produce much of the inconsistency that plagues the American doctrine of promoting respect for human rights abroad. *See, e.g.*, Sirkin, *supra* note 432, at 205.

[460] *See* R. Lillich & F. Newman, *supra* note 171, at 450-63.

[461] H. Strack, *supra* note 402, at 252.

[462] *Id.* at 253.

It bears repeating that the analysis of target nation resistance presented in these sections is based primarily on experience with multilateral sanctions programs involving not only export controls but controls on imports, financial transactions, transportation, and communications—true economic warfare. In that context, it is wholly appropriate to speak of "capitulation" and "economic mobilization." In the context of United States export controls, however, the language of economic warfare is normally out of proportion to the facts. Except in highly unusual circumstances, the type of export controls authorized by the EAA[469] can have nothing like the political or economic effects of full-scale multilateral sanctions. The analysis of effectiveness presented in these sections thus applies *a fortiori* to American political export controls.

---

[463] The Salisbury Agreement of March 3, 1978, *reprinted in* R. LILLICH & F. NEWMAN, *supra* note 171, at 396-401, first led to elections in Rhodesia and the installation of a Black Prime Minister.

[464] *See* notes 406-09 *supra* and accompanying text.

[465] *See* L. KAPUNGU, *supra* note 402, at 103-122; H. STRACK, *supra* note 402, at 85-97.

[466] *See* H. STRACK, *supra* note 402, at 237-38; Arnold, *White Exodus, not Sanctions, is Draining Rhodesia*, 11 NEW AFRICAN DEV. 393, 394 (1977).

[467] D. LOSMAN, *supra* note 355, at 43-45, 125.

[468] *See* Schreiber, *supra* note 404, at 394-405.

[469] The trade controls against Uganda and the Group Z nations do constitute nearly total trade embargoes (with the important exception of food exports to Uganda). These embargoes, however, have rarely been multilateral, and have not been instituted under the EAA. The 1979 House EAA bill would have provided that the Act did not authorize total embargoes. This provision was removed in conference, because no provision was thought necessary.

4. *Quasi-Instrumental Motivations*

The pure instrumental rationale is concerned with forcing change in target nation behavior. Other theories advanced to justify political trade controls also focus on the potential effect of controls on the target, although they acknowledge that actual change in target conduct is not attainable. These theories might be called quasi-instrumental rationales.

One such theory holds that export and other trade controls are effective ways to punish a target for past behavior. One student of economic sanctions concludes that punishment is often the dominant motive of sanctioning states, even when their expressed goals are instrumental.[470] Other scholars have also identified retribution as a motivation for both multilateral[471] and unilateral[472] sanctions programs. Although retribution is rarely advanced openly in support of United States export controls,[473] it often appears as an underlying rationale.[474]

Another theory holds that controls can function as a deterrent, putting the target nation on notice of the economic hardships the sanctioners can create and leading it to think twice before repeating disfavored conduct. Deterrence, unlike retribution, is openly advanced in justification of American political export controls.[475]

Export controls are also sometimes urged as a means of communicating to the target nation that the United States disapproves of its conduct.[476] The expression of disapproval, not the creation of economic hardship, appears as the primary purpose. The precise object of conveying such a message of disapproval is not always made clear; it may be thought that exerting moral or psychological pressure on the target will lead it to change its policies or will act as punishment or as a deterrent.[477]

---

[470] Galtung, *supra* note 344, at 380-81.

[471] *E.g.*, H. STRACK, *supra* note 402, at 238.

[472] *See* Schreiber, *supra* note 404, at 389.

[473] *But see* text accompanying note 318 *supra* (petroleum equipment controls first justified as "reprisal").

[474] *See*, *e.g.*, Uganda Hearings, *supra* note 202, at 82 ("there are certain prescriptive rules of behavior which apply to the rulers of all nations. Those who violate such rules jeopardize their standing in the community of nations. Uganda . . . belongs outside of the fellowship of civilized nations and should thus be denied its benefits.") (statement of Sen. Weicker).

[475] *See, e.g.*, 15 C.F.R. § 376.14(a) (1980), *as amended by* 45 Fed. Reg. 1595, 1598 (1980) (crime detection equipment controls).

[476] For example, President Carter stated of the various actions taken to protest the Shcharansky and Ginzburg trials, "We have expressed our displeasure in a very moderate way." N.Y. Times, July 21, 1978, at A-6, col. 1. The function of "sending a message" to the target has also motivated certain multilateral sanctions. Wallensteen, for example, concludes that most sanc-

Unfortunately, these justifications for export controls are subject to the same limitations as the instrumental rationale itself. The economic, political, and psychological factors discussed above make export controls generally an unsatisfactory form of retribution, a weak deterrent, and an ineffective vehicle for exerting moral pressure.[478]

Other potential results claimed for political trade controls do not involve any effect on the target nation itself, but are nevertheless put forward as instrumental in nature. The benefit most often cited in this context is gaining the favor of third countries that oppose the target nation's conduct, "associating the U.S. diplomatically with one group of countries as against another."[479] The United States, for example, refused to terminate the embargo of Rhodesia upon the installation of the Muzorewa government primarily for this reason.[480] Another benefit claimed is "rais[ing] the visibility" of an issue such as human rights,[481] even if little can be done to increase respect for human rights within the particular target country. The aim may be to exert subtle pressure on other nations,[482] to lay the groundwork for cooperation in future actions, or to mobilize

---

tions programs function primarily as a rejection of the target and its values. Wallensteen, *supra* note 357, at 262-65; *see* Galtung, *supra* note 344, at 399.

[477] *See* Galtung, *supra* note 344, at 399-404. When strong, positive emotional feelings prevail between the target and the sanctioners, the moral pressure of disapproval might achieve results. Ordinarily, however, expressing disapproval will not cause the target to repent and might have the opposite result. C. Brown-John, Multilateral Sanctions in International Law: A Comparative Analysis 363 (1975).

[478] *See House EAA Hearings Part I, supra* note 21, at 42, 78 (statement of Dimitri Simes).

[479] H.R. Rep. No. 96-200, 96th Cong., 1st Sess. 7 (1979); *see House EAA Hearings Part I, supra* note 21, at 191 (statement of William Root).

[480] *See Trade Sanctions Against Rhodesia: Hearing Before the Senate Foreign Relations Comm.*, 96th Cong., 1st Sess. 11-12 (1979) (statement of Cyrus Vance).

[481] *See House EAA Hearings Part I, supra* note 21, at 147 (statement of William Root).

[482] Pressure applied to third countries through example and the force of public opinion may help make controls instrumentally effective. *See, e.g., Uganda Hearings, supra* note 202, at 112 (statements of Sen. Church and William Harrup); *Senate EAA Hearings Part I, supra* note 106, at 56 (statements of Sen. Proxmire and Juanita Kreps); *id.* at 79 (statement of Juanita Kreps).

public opinion.[483] More generally, some have argued that strong moral stands will increase international respect for the United States, thereby creating new leverage.[484]

These indirect justifications for political trade controls seem intuitively to have merit. Even though they are often phrased in instrumental terms, however, they cannot be analyzed or tested in the same way as the instrumental rationale or its more direct variants. Because the benefits claimed are so subtle and so much a matter of judgment, these arguments are best considered in the context of the symbolic rationale, discussed in the next section.

5. *Summary*

The literature reveals a "striking consensus . . . that economic sanctions alone have been ineffective in the fulfillment of their primary [that is, instrumental] objectives."[485] Following an exhaustive study of the effectiveness of the United Nations sanctions against Rhodesia, for example, Strack concluded that, in terms of their political achievements, sanctions "must be regarded as marginal instruments of influence best employed in conjunction with other means of influence such as armed force."[486] Kapungu also concluded from his study of the Rhodesian case that sanctions are only likely to be effective as an adjunct to the use of force.[487] The Taubenfelds concluded from their study of collective sanctions that there is a "prima facie case against economic measures used alone."[488]

The concept of a prima facie case against the effectiveness of export controls suggests fundamental changes in the scope of executive authority under the EAA. As demonstrated in this section, the likelihood that political export controls will be successful in modifying (or even in deterring) target nation conduct must ordinarily be regarded as extremely small.[489] With successful instrumental use so exceptional, an unrestricted delegation of authority to the Executive to control American exports for political purposes seems misguided. Executive authority would be more nearly consistent with the actual utility of export controls if the President were required to make a case for the effectiveness of any proposed instrumental control sufficient to overcome the "prima facie case" against it.[490]

---

[483] Helping to create world public opinion favorable to human rights is one of the achievements credited to the United States human rights policy. *See, e.g.*, Robertson, *Human Rights, A Global Assessment*, in D. KOMMERS & G. LOESCHER, HUMAN RIGHTS AND AMERICAN FOREIGN POLICY 5, 24 (1979).

[484] *See, e.g.*, Farer, *United States Foreign Policy and the Protection of Human Rights: Observations and Proposals*, 14 VA. J. INT'L L. 623, 625-27 (1974) ("the appearance of virtue can be converted into the currency of power").

[485] Barber, *Economic Sanctions as a Policy Instrument*, 55 INT'L AFFS. 367, 373 (1979); *see* H. STRACK, *supra* note 402, at xi-xii.

[486] H. STRACK, *supra* note 402, at 253.

[487] L. KAPUNGU, *supra* note 402, at 129.

[488] Taubenfeld & Taubenfeld, *supra* note 405, at 188.

[489] *But see* Galtung, *supra* note 344, at 410. The Rhodesian sanctions might

B. THE SYMBOLIC RATIONALE

The instrumental rationale has been the dominant theoretical justification for multilateral economic sanctions in the twentieth century[491] and has been advanced in support of American foreign policy export controls as well.[492] Yet the deliberations on EAA '79 suggest that the principal justification for United States political export controls may now be symbolic rather than instrumental: that controls can and should be used to give vent to American disapproval or outrage at the behavior of a target nation, regardless of whether there are any direct or indirect instrumental results.[493]

Students of multilateral economic sanctions agree that their expressive function has often been a central reason for their use.[494] Wallensteen, for example, found that public statements by governments imposing economic sanctions tended to be dominated by expressive, emotional elements, reflecting perceptions that the target had breached norms important to the sanctioners; the instrumental or pragmatic content of the statements was very small.[495] He concluded that, although the

---

have been more effective had not two neighboring states refused to participate. *See* note 408 *supra*.

[490] In note 392 *supra*, it is suggested that those who propose instrumental export controls should carry a burden of proof on the issue of foreign availability. The present point expands on that suggestion to take account of other issues discussed in this section. Part VI of this Article considers how the suggestion could be implemented.

[491] *See* Barber, *supra* note 485, at 370, 373; Galtung, *supra* note 344, at 379, 388. Some analysts think of economic sanctions only in terms of instrumentality. *See, e.g.*, D. LOSMAN, *supra* note 355, at 1.

[492] *See, e.g.*, Huntington, *supra* note 317. Various writers have characterized instrumental goals as "primary" and symbolic purposes as "secondary." *See, e.g.*, H. STRACK, *supra* note 402, at 24-30. Barber also identified—in the context of multilateral controls—the "tertiary" purposes of supporting international law or organizations. Barber, *supra* note 485, at 370-73.

[493] *See, e.g., Uganda Hearings, supra* note 202, at 5 (statement of Sen. Hatfield) ("We are looking now to this committee to articulate and to bring into focus the essence of indignation represented by these various resolutions.").

[494] *See, e.g.*, Galtung, *supra* note 344, at 411-12.

[495] Wallensteen, *supra* note 357, at 252-54.

language of instrumentality may later be used to rationalize their actions, the motives of sanctioning states are less to modify target nation behavior than to express their own feelings.[496] The Taubenfelds concluded that some sanctions programs have actually been designed to fail instrumentally: to be strong enough to express disapproval, but not effective enough to truly damage the target or cause it to retaliate.[497]

In the United States, the importance of the symbolic function is evident from the highly emotional statements in Congress by supporters of the Uganda embargo[498] and the restrictions on exports of crime detection equipment.[499] The symbolic rationale is captured in a hypothetical case that is frequently repeated as a shorthand for symbolic controls: should the United States refuse to sell thumbscrews, useful only as instruments of torture, to an agency of a government believed to violate human rights, even though such a refusal would do nothing to prevent that government from torturing its citizens? Among members of Congress, the executive branch, and private interest groups, there is wide agreement that it should.[500]

On the part of the executive branch, the symbolic rationale has most often been expressed as a desire to use export controls to "demonstrate our opposition" to "abhorrent behavior" (such as apartheid),[501] to "disassociate" or "distance" the United States from repressive foreign governments or agencies thereof,[502] or to respond to "extreme acts" of which the United States disapproves.[503] Even when foreign conduct is not as morally offensive as apartheid, but is merely distasteful or disfavored, the government has relied on export controls to achieve distance from events or practices it opposes, refusing to continue "business as usual" with the responsible governments.[504] Indeed, the desire to use export controls symbolically became, under the Carter Administration, the principal argument for continued and unrestrained executive discretion to control exports for foreign policy purposes.[505]

---

[496] *Id.*

[497] Taubenfeld & Taubenfeld, *supra* note 405, at 201. Galtung agrees that the symbolic function is best served when the "value-deprivation" imposed on the target nation is kept low. Galtung, *supra* note 344, at 411-12.

[498] *See, e.g., House EAA Hearings Part II, supra* note 119, at 149 (statement of Rep. Pease); notes 474, 493 *supra*.

[499] Discussions of the crime detection items, in particular, often assumed a highly emotional character, as speakers drew analogies to the sale of gas chamber equipment to Hitler, concentration camp supplies to Stalin, and handcuffs to the KGB. *See, e.g., Senate EAA Hearings Part II, supra* note 250, at 140-41, 157 (statement of Jerry Goodman); *id.* at 147-48 (statement of Robert Gordon); *Senate EAA Hearings Part III, supra* note 116, at 26 (statement of Frank Weil).

[500] *See, e.g.*, H.R. REP. No. 96-200, 96th Cong., 1st Sess. 7 (1979); *House EAA Hearings Part I, supra* note 21, at 80 (statements of Rep. Bingham and James Giffen).

[501] *See House EAA Hearings Part I, supra* note 21, at 132, 145, 148 (statement of William Root).

[502] *Id.* at 686 (statement of Stanley Marcuss).

[503] *House EAA Hearings Part II, supra* note 119, at 9 (statement of William Root).

The belief that the government should restrict or prohibit exports in order to express moral feelings, or simply to disassociate itself from distasteful conduct, regardless of instrumental effects, is predictably controversial. It is derided as a desire to produce a rewarding "moral glow," as a simplistic refusal to "sup with the devil,"[506] and as a hypocritical policy;[507] and it is denounced by businessmen.[508] By others, however, it is supported as allowing the nation to express its moral feelings in a satisfying way, preserve its self-respect,[509] and release accumulated moral indignation.[510] Instrumental results, though long-range and indirect, may also be anticipated.[511]

This writer is prepared to agree that restrictions on economic intercourse are sometimes appropriate to express American distaste or moral outrage at the policies or conduct of another nation. The thumbscrew case, for example, is appealing. The rationale does, however, have troublesome implications. First, restrictions on trade are a costly means of expressing national opinion on moral or political issues.[512] Indeed, one attraction of the thumbscrew case may be that it involves nearly *de minimis* costs. Second, there has been an increasing number of issues on which the United States has felt compelled to express a position. This Article has traced the growth of foreign policy export controls during the 1970s largely in terms of the emergence of such morally engaging issues. Finally, there appears to be an increasing tendency to turn to export controls as a favored vehicle for symbolic expression, particularly on the part of the executive branch, which has broad authority to invoke controls under the EAA.

---

[504] *See, e.g.*, President's Report on Grain Embargo Under EAA '79, *reprinted in* U.S. Export Weekly (BNA) No. 292, at M-1 (Jan. 29, 1980). *See also* note 299 *supra* and accompanying text.

[505] *E.g.*, *House EAA Hearings Part I*, *supra* note 21, at 686-87 (statement of Stanley Marcuss), *House EAA Hearings Part II*, *supra* note 119, at 9 (statement of William Root); *id.* at 145 (statement of Stanley Marcuss).

[506] *House EAA Hearings Part I*, *supra* note 21, at 17 (statement of George Ball).

[507] *See, e.g.*, *House EAA Hearings Part II*, *supra* note 119, at 147 (statement of Rep. Fithian).

[508] *See, e.g.*, *Senate Foreign Policy Hearings*, *supra* note 119, at 322-23 (statement of John James).

[509] *See, e.g.*, Barber, *supra* note 485, at 380; Bilder, *Human Rights and U.S. Foreign Policy: Short Term Prospects*, 14 Va. J. Int'l L. 597, 608-09 (1974).

[510] *See* Hoffman, *The Functions of Economic Sanctions: A Comparative Analysis*, 4 J. Peace Res. 140, 154-55 (1967); Wallensteen, *supra* note 357, at 252-54. Hoffman finds that sanctions allow governments to act when they experience irresistible pressure to provide such a release, but simultaneously allow them to placate those pressuring the government not to act or not to do too much.

[511] *See* notes 479-84 *supra* and accompanying text.

[512] For a discussion of the costs of imposing export controls, see text accompanying notes 521-706 *infra*.

The latter two observations underlie the criticism that American export controls have been imposed simply because the responsible officials have concluded that they must "do something" in response to a development abroad that implicates one of a growing number of sensitive issues.[513] The charge is not baseless—the need to act, regardless of results, has been identified by scholars as a frequent motivation for both unilateral and multilateral economic sanctions.[514] Galtung finds that the value of "at least doing something," or of creating "the illusion of being instrumental," is of major importance to sanctioning states.[515] Barber notes that "[i]t is generally important for governments to be seen to be concerned and busy" and concludes that an important objective of economic sanctions is to demonstrate the government's willingness to act, even if little is achieved.[516] The "do something" tendency visible in United States export control policy[517] has been of concern not only to the business community,[518] but also to more objective students of international relations,[519] and even to some advocates of action to promote the observance of human rights.[520]

---

[513] *See Senate Foreign Policy Hearings, supra* note 119, at 266 (statement of Machinery and Allied Products Institute); *House EAA Hearings Part I, supra* note 21, at 79 (statement of James Giffen) (if executive branch has export control authority, it will inevitably use it).

[514] *See, e.g.*, Wallensteen, *supra* note 357, at 252-54, 262.

[515] Galtung, *supra* note 344, at 411-12; *see* Hoffman, *supra* note 510, at 154-55.

[516] Barber, *supra* note 485, at 380. Barber cites a remark of David Lloyd George concerning the British sanctions against Italy, occasioned by the Italian invasion of Ethiopia, under the auspices of the League of Nations: "They came too late to save Abyssinia, but they are just in the nick of time to save the Government." *Id.*

[517] The most striking example is in *Uganda Hearings, supra* note 202, at 85 (statement of Sen. Weicker) ("[T[o me what is important . . . is that we act. . . . What I am really for is that we do something.").

[518] *See* note 508 *supra* and accompanying text.

[519] *See House EAA Hearings Part I, supra* note 21, at 442 (statement of Dimitri Simes); *id.* at 295 (statement of Arthur Downey).

The challenge of the symbolic rationale is to draft legislation that will permit the symbolic use of export controls in situations of major moral or political importance, but that will restrain the growth of symbolic controls as a reflexive response to the enormous range of foreign acts and policies of which the United States might disapprove. Part V of this Article will examine how EAA '79 attempts to meet that challenge.

C. THE COSTS OF POLITICAL EXPORT CONTROLS

Neither the instrumental nor the symbolic rationale for political export controls can be properly evaluated unless the costs incurred by the nation implementing such controls are balanced against the potential benefits. This section will consider three types of costs: economic, political, and systemic.

1. *Economic Costs*

a. Lost Transactions

The economic costs of export controls are largely the product of several classes of foregone transactions that extend well beyond the balance sheets of the exporters directly affected.

The first class consists of export sales actually prohibited. According to the Commerce Department, the value of sales for which licenses were denied on foreign policy grounds during 1977 and 1978 was only $112 million.[521] Other transactions might properly be included in this class, however: sales lost because of delay[522] in processing license applications,[523] and sales not consummated because the parties expected that the licensing process would be lengthy and expensive or that the needed license would not be issued. For the exporting firm, such lost sales translate into reduced production, profits, and reinvestment; for the workers of the firm they may translate into reduced wages or unemployment.[524] Similar effects are felt among suppliers to the exporting firm, and a negative "ripple effect" passes through affected communities.[525]

---

[520] Weissbrodt expresses concern that piecemeal responses to human rights violations motivated by a desire to "do something" damage the structure of the United States human rights policy. Weissbrodt, *supra* note 170, at 262.

[521] *Senate EAA Hearings Part I, supra* note 106, at 82 (statement of Juanita Kreps).

[522] Delay is a problem of long standing. Despite past congressional efforts to establish deadlines for consideration of license applications, the problem seems to have remained quite serious. *See, e.g., Senate EAA Hearings Part I, supra* note 106, at 11 (statement of Comptroller General Elmer Staats); *id.* at 29, 43, 53, 63 (statement of Juanita Kreps); *Senate EAA Hearings Part II, supra* note 250, at 61 (statement of Scientific Apparatus Makers Association); *id.* at 63 (statement of American Electronics Association). Congress tried again in 1979. One of the "principal objectives" of the 1979 House bill was to improve the efficiency of the licensing system by establishing a series of "suspense points" at which certain actions would be required. H.R. REP. No. 96-200, 96th Cong., 1st Sess. 5. The Senate bill had similar objectives. S. REP. No. 96-169, *supra* note 31, at 9-11. Section 10 of EAA '79 establishes procedures for processing license applications based on the Senate provision. *See* H.R. CONF. REP. No. 96-482, *supra* note 10, at 49-50.

[523] *See House EAA Hearings Part I, supra* note 21, at 964-66 (statement of

The second class of foregone transactions is closely related to the first. Rarely do exports of sophisticated industrial machines, aircraft, or other capital goods involve the sale of only the original item. Such exports ordinarily lead to further sales as well: spare or replacement parts, "add-on" equipment, new generations of equipment to replace obsolete models, and training and maintenance services.[526] The loss of these sales produces comparable adverse effects, though they are less visible.

The third and broadest class of foregone transactions results not from direct interference with specific exports, but from the existence of a practice of interfering with exports. Since major export sales often lead to and grow out of long-term business relationships, the confidence of both buyer and seller is required.[527] To the extent foreign purchasers believe that the United States has adopted a policy of prohibiting or restricting exports for political reasons, they may come to think

---

James Gray); *id.* at 285 (statement of Frederick Huszagh). Professor Huszagh, Executive Director of the Dean Rusk Center for International and Comparative Law at the University of Georgia, conducted extensive research on export control procedures as adviser to the Committee on International Trade and Foreign Relations of the National Governors Association. *Id.* at 282. He notes that empirical studies have shown delay in delivery to be a significant factor in a buyer's decision to purchase capital goods. The Rusk Center is conducting research to estimate the effects of licensing delay on the competitiveness of the product groups most frequently subject to United States validated license procedures, and their "[p]reliminary calculations suggest that for some high technology products delivery delays have a significant effect on competitiveness." *Id.* at 285.

[524] *See Senate Foreign Policy Hearings, supra* note 119, at 33 (statement of David Packard); *id.* at 302-04 (statement of American Electronics Association). On the effect on employment in particular, *see id.* at 365 (statement of United Electrical, Radio, and Machine Workers). *Cf.* C. BERGSTEN, *supra* note 131, at 20 (beyond the "obvious effect on jobs and output," export controls will "weaken the controlling country's exchange rate over the long run, adding to its inflationary pressures, even if there is no such effect in the short run").

[525] *See Senate Foreign Policy Hearings, supra* note 119, at 324 (statement of Dresser Industries, Inc.).

[526] *See id.* at 306 (statement of American Electronics Association); *id.* at 311 (statement of National Foreign Trade Council).

[527] *See* Shultz, *Give Us the Rules, and We Will Finish the Job*, ACROSS THE BOARD, May 1979, at 78, 80.

of American firms as unreliable suppliers[528] and may consequently consider third country or domestic suppliers more favorably. Even if alternative products are more expensive or of poorer quality, concern over American export control policy can render them equivalent in the minds of buyers.[529] Although the effect may be more pronounced in nations already subject to some controls and aware of the danger,[530] it may be felt in any nation that fears becoming a target of future controls.[531] Further, because the United States seeks to regulate reexports of its products and technical information and even of the goods made with the use of controlled information, major American trading partners may begin to seek alternate supply sources for sensitive products and technologies, even for benign products to be exported to sensitive areas, all to avoid the interference of American reexport controls.[532] Any permanent diversion of trade brought about by such concerns could profoundly affect the relative economic and political power of the United States.[533]

---

[528] This is a concern of both the business community and government officials. *See, e.g., Senate Foreign Policy Hearings, supra* note 119, at 24-25 (statement of David Packard); *id.* at 306 (statement of American Electronics Association); *Senate EAA Hearings Part II, supra* note 250, at 85, 91-92 (statement of Robert McLellan for National Association of Manufacturers); *Senate EAA Hearings Part I, supra* note 106, at 7 (statement of Elmer Staats); *id.* at 152 (statement of C. Fred Bergsten).

[529] *See House EAA Hearings Part I, supra* note 21, at 285 (statement of Frederick Huszagh) (buyer awareness of past license denials may create a "learning curve," leading buyers to "consciously discount the attributes of U.S. products by the probability that the license will not be granted.").

[530] *See Senate EAA Hearings Part II, supra* note 250, at 264-67 (statement of Machinery and Allied Products Institute) (examples from the case of South Africa). William Root, of the State Department's East-West Trade Office, states that the U.S.S.R. has made the United States the "supplier of last resort." Rattner, *Trade Curbs By U.S. Hinge On Its Allies*, N.Y. Times, Jan. 6, 1980, at 14, col. 1 (quoting Root). *See also* Medvedev, *supra* note 423 ("the leaders clearly plan to end all future substantial grain purchases in America").

[531] *See* C. BERGSTEN, *supra* note 131, at 20.

[532] If alternate supplies are not available, United States controls may provide an incentive for new or expanded production within foreign states. *See House EAA Hearings Part I, supra* note 21, at 236 (statement of John Chambers). *But cf.* Huntington, *supra* note 317, at 73 (foreign manufacturers may hesitate before expanding capacity to meet a demand that could quickly be weakened by a loosening of American controls). Some diversions of trade to producers new to the market have become permanent. *See Senate EAA Hearings Part II, supra* note 250, at 261 (statement of Machinery and Allied Products Institute); C. BERGSTEN, *supra* note 131, at 20.

[533] *See Senate EAA Hearings Part I, supra* note 106, at 49 (statement of Sen. Stevenson); *id.* at 187 (statement of Richard Cooper); *Senate Foreign Policy Hearings, supra* note 119, at 21-22 (statements of Sen. Stevenson and David Packard); *id.* at 156 (statement of Dean Rusk); Taubenfeld & Taubenfeld, *supra* note 405, at 198.

Concern over possible interruption of future transactions influences American exporters as well as foreign purchasers. Entering a new export market is an expensive and lengthy process.[534] Concern over possible future controls may make the risks attendant upon researching and preparing a market, building customer relationships, and negotiating sales too high, especially for new and smaller exporters.[535] Exporters' concerns are heightened when licenses appear to be denied because a foreign policy gesture is needed, when controls are issued retroactively or without opportunity for prior public comment, and when licenses are suspended or revoked or consideration is publicly given to doing so.[536] In the view of many in American business[537] and government,[538] such actions have already chilled the efforts of business to increase exports, offsetting governmental efforts to promote them.[539]

These types of lost transactions, only the first of which comes to the attention of government officials,[540] directly affect not only the welfare of the export community[541] but also that of the whole nation. During the years when the controls described in Part III of this Article were being imposed, for example, the United States was running a large and increasing deficit in its balance of merchandise trade (from $9.3 billion in 1976 to $34 billion in 1978).[542] The trade deficits "weakened the value of the dollar, intensified inflationary pressures . . ., and heightened instability in the world economy."[543] Their seriousness was recognized by the leading international economic policy makers in the executive branch[544] and by Congress;[545] in

---

[534] *See Senate Foreign Policy Hearings, supra* note 119, at 305 (statement of American Electronics Association); *id.* at 311 (statement of National Foreign Trade Council).

[535] *Cf. id.* at 311, ("exporters simply will not bear these huge 'up-front' marketing costs without some degree of certainty about U.S. export controls"); *House EAA Hearings Part I, supra* note 21, at 285 (statement of Frederick Huszagh) (license mechanism creates "sizeable impediment to the entry of small and medium firms into the export market"); *id.* at 295 (statements of Frederick Huszagh and Arthur Downey) ("unanticipated license decisions . . . [deprive] companies of substantial investments").

[536] *See, e.g.*, notes 275, 321-43, 392 *supra* and accompanying text. For example, in 1978 the government publicly considered revoking a controversial license permitting Dresser Industries to export to the U.S.S.R. certain equipment and technology for the manufacture of oil well drill bits, *see* Bingham & Johnson, *supra* note 117, at 915, again considered revocation publicly in 1980, U.S. Export Weekly (BNA) No. 333, at A-1 (Nov. 30, 1980), then finally revoked the license. U.S. Export Weekly (BNA) No. 336, at A-4 (Dec. 9, 1980).

[537] *See, e.g., Senate Foreign Policy Hearings, supra* note 119, at 25 (statement of David Packard); *Senate EAA Hearings Part II, supra* note 250, at 63 (statement of American Electronics Association); *House EAA Hearings Part I, supra* note 21, at 69 (statement of William Giffen); Schultz, *supra* note 527, at 78, 81.

[538] *See, e.g., Senate EAA Hearings Part I, supra* note 106, at 205 (statement of Richard Cooper).

[539] George Shultz, President of Bechtel Corporation and former Secretary of Labor and of the Treasury and Director of the Office of Management and Budget, points out that American exports are a "wasting asset" from the point of view of their use as political tools. The more political export controls are used, the more exports are discouraged, and thus the less effective controls will be in the future. Schultz, *supra* note 527, at 82.

[540] *See Senate EAA Hearings Part I, supra* note 106, at 47-48 (remarks of Sen. Heinz, Sen. Stevenson, and Juanita Kreps).

[541] It should be noted that the economic burden falls disproportionately

---

even among firms engaged in export trade. Even leaving aside the makers of arms, crime control equipment, and similar products, the burden has fallen in the United States principally on the manufacturers of certain goods—such as computers, aircraft, and machinery—for which there is strong foreign demand and at least somewhat limited foreign availability, and on those manufacturers' employees, shareholders, and communities. In effect, because these goods represent the nation's greatest comparative advantage and provide a large share of its export earnings, the United States has elected to impose the maximum economic cost on itself. If political export controls are routinely extended to grain exports, this process will be repeated.

The internal incidence of costs has been recognized as a problem of multilateral economic sanctions. Doxey, *supra* note 430, at 105; MacDonald, *supra* note 443, at 73; Taubenfeld & Taubenfeld, *supra* note 405, at 197-98. For example, opposition by import-export interests in Britain and France is said to be one reason why League of Nations sanctions against Italy were not more successful. MacDonald, *supra* note 443, at 73; Taubenfeld & Taubenfeld, *supra* note 405, at 198.

[542] *See* Bureau of the Census, United States Dep't of Commerce, Statistical Abstract of the United States: 1979 at 847 (1979) (Table No. 1491) (figures adjusted to balance of payments basis). Other components of the balance of payments were in surplus during those years, but an overall current account deficit was incurred for both 1977 and 1978. *Id.*

Merchandise exports grew by less than 8% in 1976 and by only 6% in 1977, though they increased by over 21% in 1978. *Id.* at 860 (Table No. 1506). Merchandise imports increased by over 25% in 1976, over 22% in 1977, and over 16% in 1978. *Id.* Much of the increase in imports was due to petroleum imports, *see id.* at 867-68 (Table No. 1515), but in dollar value petroleum imports actually declined in 1978. *Id.*

[543] United States Export Policy, 14 Weekly Comp. of Pres. Doc. 1631 (Sept. 26, 1978). *See also* Senate Subcomm. on Int'l Finance, 96th Cong., 1st Sess., U.S. Export Policy Report 1 (Comm. Print 1979) [hereinafter cited as Export Policy Report]; C. Bergsten, *supra* note 131, at 20.

[544] *See, e.g., Exports: Time for a National Policy: Hearings Before the Subcomm. on International Economics of the Joint Economic Comm.*, 95th Cong., 2d Sess. 72 (statement of C. Fred Bergsten) [hereinafter cited as *National Policy Hearings*]; *id.* at 84 (statement of Julius Katz); *Senate EAA Hearings Part I, supra* note 106, at 163 (statement of C. Fred Bergsten); *id.* at 187 (statement of Richard Cooper).

[545] Extensive hearings were held on the need to improve export performance. Most notable were the 11 days of hearings held in 1978 before the Subcommittee on International Finance of the Senate Banking, Housing and Urban Affairs Committee, under the chairmanship of Senator Stevenson. The subcommittee produced a detailed report with broad recommendations for improving American export performance. *See* Export Policy Report, *supra* note 543. *See generally National Policy Hearings, supra* note 544; *National Export Pro-*

testimony on export controls, former Secretary of State Dean Rusk called the deficits "an emergency situation."[546] The tendency of political export controls to contribute to the trade deficits was pointed out explicitly by the American exporting community,[547] and was finally recognized by the President.[548] Although there have been improvements in the merchandise trade balance since 1978,[549] it remains true that export controls distort national trading patterns, sacrifice some gains from trade,[550] and thereby contribute to inflationary pressure and monetary instability.[551]

b. Unpredictability

The third class of costs described above—the indirect costs to the United States flowing from a reputation of unreliability abroad and of arbitrariness at home—is particularly noteworthy. Cumulatively, such costs may far exceed the hardship that controls can impose on any target nation.[552] These larger costs

---

gram: Hearing Before the Senate Comm. on Commerce, Science and Transportation, 95th Cong., 2d Sess. (1978). Export promotion has in fact become fashionable in Congress, to a degree that appears to reflect the "mercantilist instinct which seems to be inbred in human beings." C. KINDLEBERGER, POWER AND MONEY 117 (1970). While this Article recommends a reduction of certain restraints on exports, it does not endorse every effort to increase exports.

[546] *House EAA Hearings Part I, supra* note 21, at 7.

[547] *See, e.g.*, *Senate Foreign Policy Hearings*, *supra* note 119, at 260, 261-62, 264-66 (statement of Machinery and Allied Products Institute).

[548] *See* notes 578-80 *infra* and accompanying text.

[549] According to the Commerce Department, the deficit was $42.36 billion in 1978, $40.37 billion in 1979, and $36.36 billion in 1980. Wall St. J., Mar. 2, 1981, at 11, col. 1.

[550] A related issue in recent years has been whether trade with the U.S.S.R. should be perceived as a zero-sum game (any gains from trade realized by the U.S.S.R. are losses for the United States), or as a positive-sum game (both parties benefit from trade). *See, e.g., House EAA Hearings Part I, supra* note 21, at 47 (statement of Marshall Goldman); CONGRESSIONAL RESEARCH SERVICE, *supra* note 379, at 918-20. According to Thomas Wolfe, Assistant Professor of Economics at Ohio State University, many observers believe that the U.S.S.R.—with a centralized, planned economy—is able to obtain disproportionate benefits from trade transactions with American companies. This belief leads to greater faith in foreign policy export controls, which by hypothesis withhold more benefits from the U.S.S.R. than from the United States. Professor Wolfe contends that observers both overestimate the disproportionate distribution of the gains from East-West trade and overemphasize the importance that the Soviets give to those benefits, and thus hold exaggerated expectations for trade controls. *House EAA Hearings Part I, supra* note 21, at 52-53.

[551] *See* C. BERGSTEN, *supra* note 131, at 20.

[552] No aspect of foreign policy controls elicits as much scorn from critics as their self-punishing nature. *See, e.g., Senate EAA Hearings Part I, supra* note 106, at 48-49 (remarks of Sen. Stevenson and Stanley Marcuss); *Senate Foreign Policy Hearings, supra* note 119, at 323 (statement of Dresser Industries, Inc.).

are principally due to the unpredictability that inheres in foreign policy export controls,[553] a quality that becomes apparent when political controls are compared with national security controls in terms of their underlying policies, product coverage, and target nations.

The basic policy thrust of national security controls—to prevent or delay the acquisition of militarily useful technologies by nations perceived as a threat to United States national security[554]—is widely understood and accepted by American business.[555] Disagreement with the policy tends to focus, as it has since the mid-1960s, on product coverage. In contrast, there is no central foreign policy goal around which public understanding and support can readily coalesce. The concept of foreign policy has a "treacherous breadth and homogeneity":[556] its breadth includes every aspect of American international relations, subsuming all the interests of a great power,[557] while its homogeneity, at least as reflected in the EAA, gives all of these interests equal authority as bases for trade controls.[558] Further, although the purpose of national security controls has remained generally stable for some years, the goals of foreign policy are fluid. In the words of a former Secretary of Commerce:

> [I]t is sometimes very difficult to identify foreign policy goals. For one thing, they may shift from one time to another.

---

[553] The business community is nearly unanimous in holding that "the lack of predictability is the major problem in the current export control system." *Senate EAA Hearings Part II, supra* note 250, at 91 (statement of Robert McLellan). *See Senate Foreign Policy Hearings, supra* note 119, at 51 (statement of Donald Morfee).

[554] *See* notes 18-23 *supra* and accompanying text.

[555] *See Senate Foreign Policy Hearings, supra* note 119, at 321 (statement of John James); *Senate EAA Hearings Part II, supra* note 250, at 274 (statement of MAPI); Shultz, *supra* note 527, at 82.

Though not strictly relevant to the issue of predictability, it is important to note that American business strongly supports the policy of keeping militariiy useful items from adversaries, but may not share many of the foreign policy goals pursued through the use of trade controls. *See, e.g., Senate Foreign Policy Hearings, supra* note 119, at 321-22 (statement of John James); Bingham & Johnson, *supra* note 117, at 911 (with respect to promotion of human rights, "no type of foreign policy control . . . sends businessmen up the wall faster").

[556] Brown, *supra* note 392, at 164.

[557] Such interests inlude access to raw materials, opposition to terrorism, promotion of human rights, regional stability, nuclear nonproliferation, the mix of geopolitical concerns that supports the Group Z embargoes, and more.

[558] EAA '69 drew no distinctions among foreign policy goals as bases for export control authority. EAA '79 urges restriction of controls to situations in which they are necessary to further "fundamental" foreign policy objectives. EAA '79, § 3(10), 50 U.S.C. app. § 2405(a)(1) (Supp. III 1979). The provision seems to have little operative force. See note 729-32 *infra*.

> It would help us enormously if we knew precisely what those goals were. Changes in foreign policy come not only from the administration but also from the Congress. . . .
>
> . . . At any point in time, precisely what is a foreign policy goal and how you honor that goal may be quite difficult to determine.[559]

In the eyes of American business, the fluidity and diversity of foreign policy make trade contingent on unforseeable events.[560]

The export community is generally aware of the types of goods and technologies controlled for national security purposes. Although the precise items controlled are revised periodically,[561] the coverage of national security controls has not changed drastically for some time.[562] Further, since security controls are limited to sophisticated products and technologies, a limited number of exporters are affected. There are frequent disagreements over product coverage,[563] but these disagreements are generally at the margin; at the core, there is consensus on the types of products that must be controlled. Although the current move to control "technologies" rather than "products" has to some extent broken the old consensus,[564] a new one seems to be forming.[565]

---

[559] *Senate EAA Hearings Part I, supra* note 106, at 46 (statement of Juanita Kreps).

[560] *See House EAA Hearings Part I, supra* note 21, at 69 (statement of James Giffen).

[561] COCOM controls are revised every two to three years; the most recent revision took place in 1978-79. *See Export Licensing: COCOM List Review Proposals of U.S.: Hearings Before the Subcomm. on International Economic Policy and Trade of the House International Relations Comm.*, 95th Cong., 2d Sess. 1 (1978); COMPTROLLER GENERAL REPORT 1979, *supra* note 363, at 18-20, 22-27. EAA '79 requires review of multilateral security controls at least every three years and of unilateral controls every year. EAA '79, § 5(c)(3), 50 U.S.C. app. § 2404(c)(3) (Supp. III 1979). Similar requirements apply to items controlled for foreign policy purposes. *Id.* at § 6(k), 50 U.S.C. app. § 2405(k).

[562] *See* COCOM REPORT, *supra* note 393, at 53.

[563] Beyond particular license denials, exporters argue particularly that security controls are too extensive, *see* Shultz, *supra* note 527, at 82; *cf. Senate EAA Hearings Part II, supra* note 250, at 274-77 (statement of Machinery and Allied Products Institute) (government should minimize number of products subject to national security controls by defining products and technologies most important in maintaining national security); Bingham & Johnson, *supra* note 117, at 906-07 (government should restrict scope of controls and insist on vigorous enforcement of controls that remain), and that product definitions should be revised more frequently. *See Senate EAA Hearings Part II, supra* note 250, at 118 (statement of James Gray). *See generally* COMPTROLLER GENERAL REPORT 1979, *supra* note 363, at 18-27. The depth and importance of such disagreements should not be underemphasized. *See generally House EAA Hearings Part I, supra* note 21, at 537-41 (statement of Reps. Wolff and Miller on H.R. 3216).

[564] The "Bucy Report" (formally entitled "An Analysis of Export Control of U.S. Technology—a DOD Perspective"), presented to the Defense Science Board by its Task Force on United States Technology on February 27, 1976, was the genesis of the current effort by the Defense Department to identify "critical technologies," with the aim of concentrating controls on transfers of such tech-

In contrast, there is no natural core product coverage for foreign policy controls. Such controls can and do affect products ranging from high technology items originally controlled for national security purposes to stuffed animals ("Misha" dolls for the Moscow Olympics) or copper buttons for South African police uniforms. Political controls may prohibit the sale of every conceivable product to certain buyers, such as the Group Z nations, the South African military and police, and the concessionaires at the Olympics. The result is unpredictability for all exporters.

American business knows with certainty the countries against which national security export controls are aimed. Although since 1977 the EAA has provided that a nation's Communist or non-Communist status alone should not determine whether controls are imposed,[566] the longstanding preoccupation of national security controls with exports to Communist destinations has not changed.[567]

Foreign policy controls, on the other hand, are not by nature directed at any particular nation or group of nations. With the variety of foreign policy goals that can be pursued under the EAA, few nations in the world can be considered safe from the application of controls. The human rights policy, in particular, leads to broad potential country coverage. It is an unpleasant fact that an alarming number of nations show sufficient disregard for human rights to be considered potential targets of

---

nologies and thereby permitting expanded exports of high technology products. Highlights of the report are reprinted in *Senate Foreign Policy Hearings, supra* note 119, at 170. *See generally* COMPTROLLER GENERAL REPORT 1979, *supra* note 363, at 60-64; *House EAA Hearings Part I, supra* note 21, at 537-41 (statement of Reps. Wolff and Miller on H.R. 3216). The "military critical technologies" approach is continued under EAA '79, § 5(d), 50 U.S.C. app. § 2404(d) (Supp. III 1979).

[565] *See House EAA Hearings Part I, supra* note 21, at 1020 (reprinted speech of J. Fred Bucy).

[566] EAA '79, § 5(b), 50 U.S.C. app. § 2404(b) (Supp. III 1979); Export Administration Amendments of 1977, Pub. L. No. 95-52, § 103(a)(3), 91 Stat. 235 (amending EAA '69, Pub. L. No. 91-184, § 4(b), 83 Stat. 841) (expired 1979).

[567] The 1979 country policy report of the State Department concluded that only the Communist nations (other than Yugoslavia) should be subject to national security controls because only they pose an immediate threat to American national security. *See House EAA Hearings Part I, supra* note 21, at 646 (statement of William Root). Most categories on the CCL are controlled for export to all destinations, but licenses for exports to "free world" destinations are usually granted if the end use is appropriate and there is adequate protection against diversion. *See* 15 C.F.R. § 385.4(b)(1) (1980) (policy governing licenses to countries in Group V).

American export controls.[568] Amnesty International, in its 1973 *Report on Torture*, stated that "torture has virtually become a world-wide phenomenon . . . encouraged by some governments and tolerated by others in an increasingly large number of countries."[569] Shestack and Cohen, urging a more active human rights policy, wrote in 1974 that "one can call the roster of the United Nations and find human rights violations in each case."[570] The State Department under Secretary Kissinger declined to release its 1975 report on human rights in nations receiving United States military assistance "since all but a relative handful of countries committed human rights violations . . . ."[571] Sirkin states that "[m]ost developing countries are currently under authoritarian rule; a substantial number might qualify as gross violators [of human rights]."[572]

The Carter Administration pointed to improvements in the world human rights situation after 1977;[573] while there is room for optimism, the situation remains "discouraging and alarming."[574] The State Department's 1979 report on human rights in nations receiving American assistance, for example, includes the Freedom House ratings of civil and political "freedom" prevailing in the nations of the world. Fifty-five nations are rated "not free," while another fifty-three are considered only "partly free." Even the group of "free" nations includes some—such as Greece, Turkey, and Spain—where respect for human rights may not be firmly rooted.[575] With this pool of potential targets, foreign policy controls affecting transactions of American exporters could be imposed at any time.[576]

---

[568] The vast majority of nations are in fact subject to controls on purchases of crime detection equipment. *See* notes 266-90 *supra* and accompanying text.

[569] Amnesty International, Report on Torture 7 (1973).

[570] Shestack & Cohen, *Internatonal Human Rights: A Role for the United States*, 14 Va. J. Int'l L. 673, 675 (1974).

[571] Gwertzman, *U.S. Blocks Rights Data on Nations Getting Arms*, N.Y. Times, Nov. 19, 1975, at 14, col. 6.

[572] Sirkin, *supra* note 432, at 210.

[573] *See, e.g., Human Rights Hearings, supra* note 170, at 5-7 (statement of Mark Schneider); *Report on Human Rights Practices*, supra note 200, at 4-7.

[574] *See* Robertson, *supra* note 483, at 8.

[575] *Report on Human Rights Practices, supra* note 200, at 661-62, 664-65.

[576] *See House EAA Hearings Part I, supra* note 21, at 9 (statement of Dean Rusk). Because of the large number of potential targets, export controls raise the problem of inconsistency which has plagued other aspects of the human rights movement. *See, e.g., Human Rights Hearings, supra* note 170, at 18-19 (statement of Rep. Ryan); *id.* at 33 (question to State Department); *id.* at 47, 49 (Congressional Research Service Issue Brief); Sirkin, *supra* note 432, at 210. The scope of the human rights policy has been limited by confining its application to "gross violators" of "internationally recognized" human rights, to the in-

The broad potential applicability of political export controls is both a product and a cause of what may be called a "control psychology."[577] The use of political export controls on a sufficient number of occasions leads foreign nations, American exporters, and other interested groups to expect that, in the future, the United States will continue to pursue a range of foreign policy goals and to react to a variety of international developments by imposing controls. As these expectations become established, issue-oriented groups in the United States will increasingly call for trade controls, seeing any program of governmental action not including them as insufficient. Government officials will turn ever more readily to trade controls as a policy instrument, assuming that foreign nations and domestic constituencies will perceive any American reponse not including controls as an indication of less than full disapproval. The more these effects lead to the use of controls, the greater will be the pressure for their use in the future. With the imposition of controls becoming ever more likely, importers and exporters (actual and potential) will seek greater certainty by redirecting

---

stitutions within a nation most directly involved in human rights violations, to products used in human rights violations such as torture, and the like. Still, choices among potential targets have to be made.

In 1976, the State Department reported on human rights practices in six nations receiving military assistance, concluding in each case that "extraordinary circumstances" and "the national interest" justified continuing aid in spite of human rights violations. *See generally* DEPARTMENT OF STATE, HUMAN RIGHTS AND U.S. POLICY: ARGENTINA, HAITI, INDONESIA, IRAN, PERU AND THE PHILLIPINES (1976) (Report Submitted to the House Committee on Int'l Relations, 94th Cong., 2d Sess.) [hereinafter cited as HUMAN RIGHTS AND U.S. POLICY]. (The "extraordinary circumstances" and "national interest" standards are contained in § 502(B) of the Foreign Assistance Act, 22 U.S.C. § 2304(c)(1) (1978)). Among the considerations cited as justifying these conclusions were the following: access to raw materials (such as oil); the need to safeguard American investments; the desire to retain influence with powerful nations; the need to safeguard United States military security, military bases, and important allies; and the desire to maintain confidence in American security commitments. HUMAN RIGHTS AND U.S. POLICY, *supra*, at 6, 11, 16-17, 22, 27, 32; *see* Weissbrodt, *supra* note 170, at 271 n.134. While consideration of such factors has been criticized, *see, e.g.*, Weissbrodt, *supra* note 170, at 271-73; Brown, *supra* note 392, at 162-63, it seems only realistic to believe that they will continue to be considered. *See also* Vogelgesang, *supra* note 170, at 827. To the extent that they are considered, and economic sanctions are employed against some violators of human rights but not against others, the United States leaves itself open to charges of cynical inconsistency, reducing the moral force of its policy. *Cf.* Hoffman, *The Hell of Good Intentions*, 29 FOREIGN POL'Y 3, 8-9 (1977) (avid pursuit of all human rights violations is likely to be a highly self-destructive ordeal).

[577] The term is suggested by the concept of an "inflationary psychology," which occurs when consumers expect inflation to continue and increase their current spending to "beat" future price increases, thus worsening inflation.

their resources to areas in which the risk of political interference is less. The potential costs of creating a control psychology are staggering and should figure prominently in any decision to impose political export controls.

c. Summary of Economic Costs

At least some economic costs of political export controls were recognized by the Carter Administration.[578] In September 1978, the President announced a series of measures to improve American export performance and to reduce export barriers posed by American law and policy.[579] Among these was a directive to the agencies involved in export licensing "to take export consequences fully into account when considering the use of export controls for foreign policy purposes."[580] Administration representatives later indicated that care was being taken to "insure, in those instances where controls are invoked, that the foreign policy gain will outweigh the commercial loss."[581] New foreign policy controls did appear to slow following the President's statement, a change attributed by the Administration to increased sensitivity to export consequences and foreign availability.[582] Most of the controls in effect at the time of the statement were expressly continued in force,[583] however, and near the end of President Carter's term, significant new controls were imposed.[584] In justifying these actions, executive branch officials on occasion appeared to deal in an almost casual way with the mandate to take export consequences fully into account.[585] The Carter Administration also opposed inclusion in EAA '79 of a requirement that economic costs be considered before imposing foreign policy export controls.[586] It appears, in short, that further legislative steps—even beyond those taken in EAA '79—are needed to ensure that the full range of economic costs is considered in any decision on political export controls.

---

[578] *See, e.g., Senate EAA Hearings Part I, supra* note 106, at 151-52, 182 (statement of C. Fred Bergsten).

[579] United States Export Policy, 14 WEEKLY COMP. OF PRES. DOC. 1631, 1633-34 (Sept. 26, 1978).

[580] *Id.* at 1633. This statement also indicated that "[w]eight will be given" to foreign availability when considering controls. *Id.*

[581] *Senate EAA Hearings Part I, supra* note 106, at 189 (statement of Richard Cooper).

[582] *See Senate EAA Hearings Part III, supra* note 116, at 26 (statement of Frank Weil).

[583] 45 Fed. Reg. 1595 (1980); *see* note 799 *infra*.

[584] *See* text accompanying notes 799-810 *infra*.

[585] *See generally House EAA Hearings Part I, supra* note 21, at 141-48 (statement of William Root).

[586] *House EAA Hearings Part II, supra* note 119, at 9 (statement of William Root); *id.* at 145-46 (statement of Stanley Marcuss).

2. *Political Costs*

The political costs of export controls result from a variety of strains on international political relationships. It is obvious that relations with the target nation and its allies will be strained,[587] perhaps to the point of provoking economic, political, or even military retaliation.[588] It is less obvious, though perhaps more important, that relations with third countries may also suffer when such nations are pressured to reduce foreign availability. The limited success of the United States in obtaining cooperation from other governments has already been examined;[589] the present point is that efforts to force such cooperation have been politically costly.[590]

At least as much animosity has been engendered during past political trade control programs by American efforts to regulate two types of third country transactions without the cooperation of the host government: the reexport of United States-origin goods or technology to a target nation, and the export of local-origin goods or technology to a target nation by local subsidiaries of American corporations.

---

[587] Galtung, *supra* note 344, at 388-89; MacDonald, *supra* note 443, at 72.

[588] *See* MacDonald, *supra* note 443, at 72.

[589] *See* notes 393-405 *supra* and accompanying text. One commentator argues that before the moral duty to use trade controls in furtherance of human rights is avoided because of foreign availability, the United States must exert pressure on other nations for cooperation. *See* Brown, *supra* note 392, at 167-68. Some members of Congress have taken a similar position, criticizing the Executive for failure to so negotiate. Selective pressure, however, may be more advantageous in the long run. Brown's formulation, that all bilateral and multilateral efforts to secure leverage must be exhausted in every case, would seriously strain America's relations with her major allies—and, based on past experience, would produce little cooperation.

If pressure is not exerted out of regard for political costs, the impact of foreign availability on any proposed control must be considered. It should also be remembered that in the case of controls like the South African military and police embargo (imposed on a broad range of items, including items widely available), negotiations sufficient to eliminate foreign availability are simply impracticable.

[590] *See* D. LOSMAN, *supra* note 355, at 138. Recent efforts to obtain cooperation in sanctions against Iran, for example, caused serious strains in relations with the EEC. *See, e.g.*, Apple, *Europe Expects Criticism for Retreat on Iran Sanctions*, N.Y. Times, May 11, 1980, at 3, col. 1; Gwertzman, *Muskie Will Raise Iran Sanctions in Talks With Allies*, N.Y. Times, May 12, 1980 at 1, col. 6; Gwertzman, *Muskie Reminds Allies of Pledge for Sanctions on Iran*, N.Y. Times, May 14, 1980, at 1, col. 1. Another recent illustration of political tension arose in November 1980, when United States Customs held up clearance of a shipment of steel products from the Creusot-Loire Company of France. The ostensible reason was that the steel included Cuban nickel; the "real" reason was said to be retaliation against Creusot-Loire for taking over a Soviet contract which American firms had to give up when the technology embargo was imposed. *See* U.S. EXPORT WEEKLY (BNA) No. 333, at A-6 to A-7 (Nov. 18, 1980). Maintaining cooperation among participating states has similarly been a major problem in the use of multilateral economic sanctions. *See, e.g.*, Taubenfeld & Taubenfeld, *supra* note 405, at 185, 195, 197-200.

a. Reexport Controls

Besides prohibiting exports from the United States of items that the exporter knows are to be reexported,[591] the Regulations directly prohibit all reexports by foreign purchasers[592] unless specific approval is granted by the OEA[593] or general authorization is given in the Regulations.[594] Because reexport controls extend to parts, components, and other materials used in foreign manufacturing, inclusion of a single American-origin component may prevent the export from a foreign country of an end product manufactured there by a local firm.[595]

Controls on the reexport of technical information have an extra dimension of complexity because the Regulations attempt to control the disposition of some goods produced abroad with the aid of American-origin data.[596] American controls extend, for example, to exports from any country to a country in Groups Q, W, Y, P, or Z of certain "direct products" of American-origin data[597] and certain commodities produced by a plant, or a major component thereof, which was the direct product of United States-origin data.[598] Until recently, reexport controls were primarily based on national security, but they are now a part of many of the foreign policy controls described in Part III of this Article.[599]

---

[591] *Cf.* 15 C.F.R. § 374.1(b) (1980) (goods); *id.* at § 379.8(a)(2) (information).

[592] *See id.* at §§ 374.1(a) (goods); *id.* at 379.8(a)(1) (information). "Reexport" includes transshipment or diversion of goods or information as well as subsequent export from the purchasing nation. *Id.* at § 370.2.

[593] *See id.* at § 374.3 (goods); *id.* at § 379.8(c) (information).

[594] *See id.* at § 374.2 (goods); *id.* at § 379.8(b) (information).

[595] *See id.* at § 376.12. An example might be the extension of American controls to the export from another country of a machine tool manufactured locally, but containing a United States-origin "numerical control device." *See id.* at § 376.11.

[596] *See id.* at § 379.8(a)(3).

[597] *Id.* A "direct product" is defined for this purpose as the immediate product, including a process or service, produced by use of the data. *See id.* at § 379.4(f) n.6.

[598] *See id.* at §§ 379.8(a)(3), 379.4(f), 379.5(e)(1)-(2).

[599] *See, e.g., id.* at § 385.4(a)(1)-(4) (Republic of South Africa and Namibia); *id.* at § 379.4(f)(1)(i)(p) (petroleum equipment).

Even American national security reexport controls caused friction with both nonaligned nations[600] and members of COCOM.[601] COCOM members especially resented them because they either (1) implemented unilateral United States controls exceeding the level of restraint agreed upon by COCOM, or (2) duplicated the COCOM review process and the national control systems maintained by members in accordance with their COCOM obligations. Implementation of unilateral controls fueled the longstanding dispute over the proper product coverage of COCOM controls, while duplication implied distrust of foreign control systems.[602] COCOM members' complaints were sharp enough to prompt the United States in the late 1970s to seek ways of eliminating at least the duplicative aspect of its reexport controls, and in 1980 a partial step in this direction was taken.[603]

When the United States regulates reexports in support of foreign policy controls, an issue similar to that raised by unilateral national security controls arises: American interference with the trade of a nation that has not agreed to participate in the American controls, that may strongly disapprove of them, and that may even have specifically refused to support them.[604]

Beyond an emotional reaction to American interference

---

[600] *See* COCOM REPORT, *supra* note 393, at 55.

[601] *See* COMPTROLLER GENERAL REPORT 1979, *supra* note 363, at 9-10, 15.

[602] *See id.* Such distrust does appear to be the principal reason for maintenance of security reexport controls. *Id.* at 14.

[603] President Carter stated that his Administration would "stop issuing a separate U.S. reexport license in cases where [it had] already approved reexport of the same product as part of the COCOM process." PRESIDENT CARTER'S RECOMMENDATIONS TO CONGRESS ON EXPORT DISINCENTIVES AND COMMERCE DEPARTMENT SUMMARY OF MAJOR FINDINGS (Sept. 9, 1980), *reprinted in* U.S. EXPORT WEEKLY (BNA) No. 324, at M-1, M-3 (Sept. 16, 1980).

[604] Foreign resentment over some of the most recent foreign policy export controls has been mitigated by implementing reexport controls in a much less rigorous manner than has been the case with national security controls and past foreign policy controls.

The April 1980 order prohibiting most exports to Iran under the President's emergency authority, *see* note 810 *infra*, covered exports "from the United States, or from any foreign country," but only when made "by any person subject to the jurisdiction of the United States . . . ." Exec. Order No. 12,205, § 1-101(a), 45 Fed. Reg. 24,099 (1980). Further, the order did not apply to foreign subsidiaries of American corporations. *See id.* at § 1-102. *See also* 31 C.F.R. § 535.207(b) (1980). Thus, reexports by foreign purchasers, or even by American foreign subsidiaries, were not covered.

The regulations were later tightened, *see* 31 C.F.R. § 535.430 (1980), prohibiting the export of items to be incorporated in foreign-manufactured goods when the "person subject to the jurisdiction of the United States has reasonable cause to believe that those goods are intended for export to Iran." This section, however, still applies to exports from the United States to third countries, not and a desire not to lose export sales, foreign resentment of American reexport controls is rooted in theoretical opposition to the extraterritorial application of United States law.[605] American reexport controls, like some aspects of American securities and antitrust law, are seen as improper attempts to subject foreign firms and nationals, residing and doing business abroad, to legal sanctions[606] for violations of American regulations even though their conduct is not prohibited by local law.[607] American claims of extraterritorial jurisdiction to prescribe rules of conduct[608] have been sharply criticized abroad even when limited by a requirement that the foreign conduct have some effect on United States commerce[609] or that some

---

to reexports from those countries. The standard reexport prohibition was not added to the regulations.

The 1980 restrictions on exports related to the Moscow Olympics, 45 Fed. Reg. 21,612 (1980), appeared to cover any reexports, requiring validated licenses or reexport authorization for the export or reexport of any commodity or technical data that the exporter or reexporter had reason to know was for a use in any way related to the Olympics. The application of the provision, however, was again limited to exports or reexports by persons "subject to the jurisdiction of the United States." *See id.* (amending 15 C.F.R. § 385.2). Further, for the purpose of this regulation only, the phrase "person subject to the jurisdiction of the United States" was defined to include United States citizens or resident individuals, United States corporations, and any permanent establishments of foreign firms in the United States. *Id.* Thus, again, the reexport of a controlled item by a foreign purchaser, or even by a foreign subsidiary of a United States corporation, was not covered by the regulations.

On the other hand, the embargo on sales of grain to the U.S.S.R., implemented in January 1980, *see* note 803 *infra*, applied fully to the reexport by purchasers in other countries of American grain, *see* 45 Fed. Reg. 1883 (1980) (amending 15 C.F.R. § 376.5; amending and revising 15 C.F.R. §§ 386.7(a), 399.1), as did the related controls on exports of phosphates used for fertilizers. *See* 45 Fed. Reg. 8293 (1980) (amending 15 C.F.R. § 399.2).

[605] *See, e.g.*, H. STEINER & D. VAGTS, TRANSNATIONAL LEGAL PROBLEMS 998-99, 1047-49 (1976); Hacking, *The Increasing Extra-Territorial Impact of U.S. Laws: A Cause for Concern Amongst Friends of America*, 1 NW. J. INT'L L. & BUS. 1, 1-10 (1979).

[606] *See* 15 C.F.R. § 387.1 (1980) (criminal, administrative, and civil sanctions); *see also id.* at § 388.3 (administrative and civil sanctions).

[607] *Cf.* Berman & Garson, *supra* note 2, at 866-67, 875-76 (the extraterritorial imposition of penalities may strain international legal principles). The reexport regulations for commodities provide that reexport authorization by the Office of Export Administration does not relieve any foreign person or firm from the burden of complying with foreign laws. *See* 15 C.F.R. § 374.9 (1980). The rules for technical data are similar, but also provide that no foreign law, rule, or authorization relieves any person of responsibilities under the Export Administration Regulations. *See id.* at § 379.8(d).

[608] *See* RESTATEMENT (SECOND) OF FOREIGN RELATIONS LAW OF THE UNITED STATES §§ 6-7 (1965) [hereinafter cited as RESTATEMENT].

[609] *See* Schoenbaum v. Firstbrook, 405 F.2d 200, 208-09 (2d Cir.), *cert. denied*, 395 U.S. 906 (1968); ANTITRUST DIVISION OF THE DEP'T OF JUSTICE, ANTITRUST GUIDE FOR INTERNATIONAL OPERATIONS 6-7 (1977), *reprinted in* [1977] 5 TRADE REG. REP. (CCH) ¶ 50,309 [hereinafter cited as ANTITRUST GUIDE].

conduct necessary to the violation take place within the United States.[610]

Reexport controls do not clearly fall within any of the internationally accepted justifications for extraterritorial jurisdiction to prescribe rules of conduct, nor even within those justifications accepted in the United States.[611] For example, no conduct relating to a reexport transaction need take place in the United States for the reexport prohibition to attach.[612] A reexport ordinarily has no direct effect on American commerce; and the effect of any single transaction on the foreign policy interests of the United States does not seem substantial.[613] The United States might assert jurisdiction under the "protective principle," arguing that reexports "threaten its security as a state," but as to foreign policy controls that assertion seems exaggerated at best. In any event, reexports do not appear to constitute conduct "generally recognized as a crime" within the American version of the protective principle.[614] Although foreign importers are often required to make written representations or assurances regarding reexport—and thus can be said to be subject to United States regulation as a matter of contract[615] — the reexport regulations apply regardless of whether the purchaser has signed a document that refers to or accepts them.[616] As there is no generally accepted principle of international law governing the extent to which a nation has jurisdiction to prescribe legal consequences for the acts of foreign persons abroad,[617] restrictions on reexports will remain a source of theoretical disagreement and political tension between the United States and its trading partners, especially to the extent such restrictions serve only unilateral foreign policy interests.

---

[610] *See* Leasco Data Processing Equip. Corp. v. Maxwell, 468 F.2d 1326, 1334 (2d Cir. 1972).

[611] *See* RESTATEMENT, *supra* note 608, §§ 10-36; Note, *Extraterritorial Application of the Export Administration Amendments of 1977*, 8 GA. J. INT'L & COMP. L. 741, 747-50 (1978) (discussing anti-boycott rules). *See also* Nash, *Contemporary Practice of the United States Relating to International Law*, 74 AM. J. INT'L L. 158, 180 (1980) (State Department generally follows the *Restatement*).

[612] *Cf.* RESTATEMENT, *supra* note 608, at § 17 ("Jurisdiction to Prescribe with Respect to Conduct, Thing, Status, or Other Interest within Territory").

[613] The RESTATEMENT, *supra* note 608, at § 18, provides that a state has jurisdiction to prescribe a rule attaching legal consequences to conduct outside its territory which causes an effect within its territory, if either (a) the conduct and the effect are generally recognized as elements of a crime or tort, or (b) the effect is substantial, direct, and foreseeable, and the rule prescribed is not inconsistent with the principles of justice recognized by states having reasonably developed legal systems. Paragraph (b), dealing with acts "malum prohibitum," seems to be the only alternative applicable to foreign policy reexport controls. Jurisdiction is normally based on an effect on commerce. *See* [1977] 5 TRADE REG. REP. (CCH) ¶ 50,309, at 55,655. The Reporters' Notes to § 18, however, indicate that other effects—such as effects on the prescribing nation as a whole—can also serve as a basis for jurisdiction to prescribe. The Reporters' Notes illustrate this point with cases involving the inciting of sedition, disclosure of military secrets dangerous to armed forces, and the like. RESTATEMENT, *supra* note 608, Reporters' Notes § 18, at 56. A reexport usually would not have any effect on United States commerce—unless the original American exporter participated in it and therefore could be penalized directly under the Regulations—and would not normally seem to have a "substantial" effect on the foreign policy interests of the United States comparable to the examples given in the Reporters' Notes to § 18.

[614] Section 33 of the RESTATEMENT, *supra* note 608, codifies the "protective principle": a state has jurisdiction to prescribe rules attaching legal consequences to conduct abroad which "threatens its security as a state or the operation of its governmental functions, provided the conduct is generally recognized as a crime under the law of states that have reasonably developed

b. Controls on Foreign Entities

Even more severe political tension has been generated by American efforts to control local-origin exports by foreign firms owned or controlled by United States persons. Such efforts created serious foreign policy problems during the 1960s, when the United States continued its embargo of the People's Republic of China after most other Western nations had come to treat

---

legal systems." This section was intended to provide a basis for jurisdiction to prescribe when the effects of foreign conduct are not sufficient to invoke § 18. *See id.*, Comment c. The principle is restricted to recognized crimes, however, to prevent untoward extensions of jurisdiction. *See id.*, Comment d.

[615] Most validated license applications for the export of goods require a statement from the "ultimate consignee or purchaser" regarding ultimate destination and end use. *See* 15 C.F.R. § 375.2(a) (1980). It is a violation of the Regulations to divert goods outside of these representations. *See id.* at § 375.2(f)(2). Many validated license applications for the export of technical data must be supported by a similar statement from the foreign importer. *Id.* at § 379.5(e)(2). Some technical data may only be exported under General License GTDR with written assurances from the importer regarding reexport to Groups P, Q, W, Y, and Z. *See id.* at § 379.4(f).

[616] The ultimate consignee/purchaser statement is not required for validated license exports to Group T, *see id.* at § 375.2(a), nor is any representation from the importer required for any general license export of goods. Importer statements and written assurances are only required for exports of technical data of the types specified in the relevant regulation. *See id.* at §§ 379.5(e)(2), 379.4(f). Destination control statements, warning that diversion contrary to American law is prohibited, must be used in connection with all exports under a validated license and under certain general licenses, *id.* at § 386.6(a), and the Regulations purport to make it illegal for any person to divert the exported goods once that person has received notice of the prohibition against diversion to any country not authorized in that notice. *See id.* at § 386.6(i). The destination control statements, however, do not cover all the destinations subject to foreign policy export controls, and they do not in any case constitute the agreement of the importer to the application of the American regulations.

[617] RESTATEMENT, *supra* note 608, § 37, Comment a.

that country no more restrictively than the U.S.S.R.[618]

The embargo of the People's Republic of China was implemented under the United States Foreign Assets Control Regulations (FACR), promulgated under the extraordinary national emergency powers granted to the President by the Trading with the Enemy Act (TWEA).[619] Substantially all the prohibitions of the FACR apply to "any person subject to the jurisdiction of the United States,"[620] a phrase defined to include any "partnership, association, corporation, or other organization, wheresoever organized or doing business, which is owned, or controlled by" United States citizens, residents, or corporations.[621] The FACR purported directly to prohibit these controlled foreign firms from trading with the People's Republic of China, although, in both theory and practice, such a prohibition could only be enforced against the American parents.[622] The most celebrated attempt to interrupt a transaction by a foreign subsidiary is undoubtedly the Fruehauf case, in which the United States directed the Fruehauf Corporation of Detroit to instruct its French subsidiary to cancel a sale of truck bodies for export to the People's Republic of China, over the strong protest of the French government. The diplomatic impasse was only broken when the French courts intervened.[623]

---

[618] *See* Berman & Garson, *supra* note 2, at 867-69, 872-76. *See generally* Corcoran, *The Trading with the Enemy Act and the Controlled Canadian Corporation*, 14 MCGILL L.J. 174 (1968); Craig, *Application of the Trading with the Enemy Act to Foreign Corporations Owned by Americans: Reflections on* Fruehauf v. Massardy, 83 HARV. L. REV. 579 (1970); Sommerfield, *Treasury Regulations Affecting Trade with the Sino-Soviet Bloc and Cuba*, 19 BUS. LAW. 861 (1964).

Similar problems arose regarding Latin American trade with Cuba. Binder, *U.S. Seems to Ease Stand on Barring Cuba in Talks*, N.Y. Times, April 19, 1974, at 1, col. 6. *See also* A. ROVINE, 1974 DIGEST OF U.S. PRACTICE IN INTERNATIONAL LAW 603-04.

[619] *See* 50 U.S.C. app. § 1-43 (Supp. III 1979); note 2 *supra*.

[620] *See, e.g.*, 31 C.F.R. § 500.201 (1980).

[621] *Id.* at § 500.329. The word "controlled" is not defined in the regulations, *but see* Sommerfield, *supra* note 618, at 866-67.

[622] The United States considers a corporation to be a national of the country under whose laws it is created. The theory on which controls over foreign subsidiaries are based is that the United States has jurisdiction to prescribe rules governing the conduct of its own nationals—in this case the foreign corporation's shareholders—and jurisdiction to enforce those rules within its territory. By regulating the owners of the foreign corporation, then, it can indirectly control its activities. *See* RESTATEMENT, *supra* note 608, § 27, Comment d, illustration 1, Reporters' Notes. In practice, enforcement of such controls has been directed at the American owners—the Treasury Department has directed them to cause their subsidiaries to act as desired. *See* Berman & Garson, *supra* note 2, at 868; Corcoran, *supra* note 618, at 177. The regulations, however, are still written to apply directly to the foreign corporation.

[623] *See generally* Fruehauf Corp. v. Massardy, [1965] La Semaine

Since 1977, Presidential authority to impose emergency trade controls has derived from the International Emergency Economic Powers Act (IEEPA),[624] which reaches jurisdictionally as far as the FACR.[625] The IEEPA has thus far been invoked only twice. In 1979, President Carter declared a national emergency with respect to the "situation in Iran" and ordered all official Iranian assets blocked.[626] The President's order and the Treasury Department's implementing regulations[627] extended the freeze to all property of the designated official Iranian entities that was "subject to the jurisdiction of the United States or which [was] in the possession of or control of persons subject to the jurisdiction of the United States . . . ."[628] The phrase "person subject to the jurisdiction of the United States" was defined exactly as in the FACR.[629] The blocking of assets was clearly intended to apply extraterritorially, because an announcement of Iran's intention to withdraw from American banks all its official deposits, many of which were held in foreign branches and subsidiaries, was the immediate provocation for the American action.[630] Subsequent trade sanctions against Iran, however, did not have the same territorial reach.[631] The order banning exports to Iran, for example, applied generally to exports "by any person subject to the jurisdiction of the United States" regardless of the country of origin,[632] but exempted from the ban any nonbanking corporations or other organizations organized and doing business under the laws of a foreign country.[633] The first use of IEEPA trade control authority thus showed restraint in terms of extraterritorial application. A sec-

---

Juridique II 14274 (bis) (Cour d'appel, Paris), [1965] Gaz. Pal. II 86, 5 Int'l Legal Material 476, *reprinted in* A. LOWENFELD, *supra* note 92, § 3.31, at 83-86; Craig, *supra* note 618.

[624] *See* 50 U.S.C. §§ 1701-1706 (Supp. III 1979); note 2 *supra*.

[625] The President is authorized to regulate transactions "by any person, or with respect to any property, subject to the jurisdiction of the United States." 50 U.S.C. § 1702(a)(1) (Supp. III 1979).

[626] Exec. Order No. 12,170, 3 C.F.R. 457 (1980). The Iranian controls were extended under the National Emergencies Act. 45 Fed. Reg. 75,159 (1980).

[627] *See* 31 C.F.R. Pt. 535 (1980). Exec. Order No. 12,170, *supra* note 626, delegated to the Treasury Department all powers available to the President under the IEEPA.

[628] Exec. Order No. 12,170, 3 C.F.R. 457 (1980); 31 C.F.R. § 535.201 (1980).

[629] *See* 31 C.F.R. § 535.329 (1980); note 621 *supra*.

[630] *See* Gwertzman, *U.N. Session Averted*, N.Y. Times, Nov. 15, 1979, at 1, col. 6; Wall St. J., Nov. 15, 1979, at 1, col. 6.

[631] *See* note 604 *supra*.

[632] *See* 31 C.F.R. § 535.207(a) (1980).

[633] *See id.* at § 535.207(b). Later amendments extended the embargo to all technical data, including that which is already published, and to exports to third countries when the exporter has reasonable cause to believe that the

ond national emergency was declared in 1980, in response to "subsequent events in Iran" (the seizure of American hostages) and the Soviet invasion of Afghanistan.[634] This declaration was used to support an import embargo and other sanctions against Iran, but not any sanctions against the Soviet Union or Afghanistan.[635]

Prior to December 1977, the export control statutes, unlike the emergency statutes, did not authorize this form of extraterritorial control at all, empowering the President only to "prohibit or curtail . . . exportation from the United States, its territories and possessions."[636] In 1977, however, as part of the legislation limiting TWEA to times of war and enacting IEEPA,[637] Congress amended EAA '69 to permit the President to control all exports of property "subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States."[638]

The legislative history of this amendment seems to reveal confusion among the responsible members of Congress. It appears that the amendment was intended simply to supplement the newly restricted TWEA by allowing the President to continue exercising the authority over foreign subsidiaries he had previously exercised under that Act.[639] The controls on exports

---

items sold are intended for resale to Iran. *See id.* at §§ 535.429, .430. Export controls, however, were not extended to foreign subsidiaries.

[634] Exec. Order No. 12,211, 45 Fed. Reg. 26,685 (1980).

[635] *Id.* at §§ 1-101 to -103, 1-106. Other political export controls relating to the Afghanistan invasion—including the Olympics embargo and the controls on exports of grain and phosphates, *see* notes 802-04 *infra*,—preceded the April 1980 declaration of emergency. Later controls on certain exports to the Kama River truck plant and on exports to Afghanistan, *see* notes 808-09 *infra*, were based only on EAA authority.

[636] EAA '69, Pub. L. No. 91-184, § 4(b), 83 Stat. 841 (codified at 50 U.S.C. app. § 2403(b) (1976)) (expired 1979). It should be noted that EAA '69 was supplemented in the national security area by the Transaction Control Regulations, imposed under TWEA, which regulated exports by foreign subsidiaries of strategic items. *See* note 2 *supra*.

[637] Act of Dec. 28, 1977, Pub. L. No. 95-223, tit. III, 91 Stat. 1625 (expired 1979); *see* note 2 *supra*.

[638] Act of Dec. 28, 1977, Pub. L. No. 95-223, tit. III, § 301(a), 91 Stat. 1625 (expired 1979).

[639] The principal House sponsor, Representative Bingham, stated that the amendment was needed so that the President could continue to exercise the power that he had been exercising under TWEA to control transactions by foreign subsidiaries. *Revision of Trading with the Enemy Act: Markup Before the House Comm. on International Relations*, 95th Cong., 1st Sess. 7-10 (1977) (statement of Rep. Bingham). The Senate Banking Committee similarly stated that the amendment would authorize the President to control foreign subsidiary exports as previously had been done under the emergency provisions of TWEA. S. REP. No. 95-466, 95th Cong., 1st Sess. 6 (1977).

by foreign subsidiaries that had been implemented under TWEA, however, covered only exports to embargoed nations and exports of strategic goods to Communist nations. Furthermore, these controls, including the FACR, were grandfathered by the very same 1977 statute and are still in effect.[640] Thus, the 1977 amendment of EEA '69 went much further than was necessary simply to allow the President to continue doing what he had been doing. In fact, its effect has been to broaden the potential reach of peacetime, non-emergency foreign policy controls to exports by foreign subsidiaries of all products and data (not merely strategic) to all destinations (not merely the embargoed nations and other Communist countries).

Admitting that the implications of the 1977 amendment "may not have been considered adequately by the Congress at the time the provision was adopted,"[641] the Senate Banking Committee later reported that it had considered deleting this provision. The Committee noted that the Executive had not yet utilized the new authority, so that no controls would be undone if the provision were repealed, and observed that any controls imposed under it would probably be challenged by foreign nations.[642] Yet the Committee did not recommend repeal, "pending further study," principally to leave the executive branch the flexibility to impose extraterritorial controls in cases in which "the United States would wish to distance itself from especially abhorrent acts of other Governments."[643] As of this writing, the Executive's authority to impose extraterritorial controls under the EAA remains unused.[644]

---

[640] *See* note 2 *supra*.

[641] S. REP. NO. 96-169, *supra* note 31, at 4-5.

[642] *Id.* at 5.

[643] *Id.*

[644] None of the controls discussed in Part III applied to foreign subsidiaries, and neither have the foreign policy controls implemented more recently against the U.S.S.R.

The regulations imposing an embargo on the Olympics, 45 Fed. Reg. 21,612 (1980) (to be codified at 15 C.F.R. § 385.2(d)), applied to exports by "persons subject to the jurisdiction of the United States," but the phrase was defined for that purpose to "include" United States citizens and residents, American corporations, and permanent American establishments of foreign corporations. *Id.* The release accompanying the regulations in the Federal Register stated that the term "meant" these three categories, and did not merely include them among others. *Id.* Remarks by government officials confirmed that foreign subsidiaries would only be covered if they were acting jointly with their American parents. *See* U.S. EXPORT WEEKLY (BNA) No. 301, at A-1 (April 1, 1980).

When the grain embargo was imposed, the Agriculture Department requested American grain companies not to sell grain from third countries to the Soviets until those countries could develop their own restrictive policies. *See*

Extraterritorial controls were imposed by Congress as part of the Uganda embargo, however, and a related move was made by the Executive to expand the reach of other controls under the EAA. The provision added to EAA '69 to implement the embargo forbade the export to Uganda of most goods subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States.[645] Although the temporary regulations went no further,[646] the more detailed proposed regulations[647] would have placed Uganda in Country Group Z and would have prohibited not only exports and reexports of American-origin items, but also exports of non-American-origin goods and information by any "person subject to the jurisdiction of the United States,"[648] as defined in an expansive and detailed way.[649] To this extent, the proposed regulations reflected congressional intent. Beyond this, however, the proposal would have added the same broad definition of "person subject to the jurisdiction of the United States" to the general definitions in the Regulations and would have included a general policy statement describing the potential extraterritorial effect of all export control regulations.[650] This proposed language appeared to be a tentative first step by the executive branch toward greater extraterritorial export controls, and it was strongly criticized as such at the time.[651]

U.S. Export Weekly (BNA) No. 314, at A-5 (July 1, 1980). Foreign sales by the companies themselves or by foreign subsidiaries, however, were not prohibited.

The controls imposed on high technology exports to the U.S.S.R. in January 1980 involved merely a tightening of licensing policy, the suspension and cancellation of certain licenses, and the addition of certain new categories to the CCL; no change in the territorial coverage of the Regulations was made. In fact, the Commerce Department issued a clarifying statement to the effect that foreign subsidiaries would not be affected by the new controls unless they were trading in American-origin products or data. *See* U.S. Export Weekly (BNA) No. 302, at N-1, N-3 (April 8, 1980).

Use of the authority has been advocated to strengthen the South African embargo. *See* Mehlman, Milch & Toumanoff, *supra* note 241, at 596-97, 600.

[645] Bretton Woods Agreement Act—Financing Facility, Pub. L. No. 95-435, 92 Stat. 1051 (Oct. 10, 1978) (expired 1979).

[646] 43 Fed. Reg. 49,304 (1978) (repealed 1979).

[647] 43 Fed. Reg. 58,571 (1978).

[648] *Id.* at 58,573 (proposed 15 C.F.R. § 385.1(c)).

[649] Proposed 15 C.F.R. § 385.1(c)(1), would have defined the term as the anti-boycott regulation had, 15 C.F.R. § 369.1(a)-(c) (1980), with the addition of foreign corporations "controlled in fact" by individual American citizens and residents. *See* 43 Fed. Reg. 58,573 (1978).

[650] 43 Fed. Reg. 58,571-72 (1978). The statement of policy would have been inserted after 15 C.F.R. § 370.3(a), the general prohibition of exports without a general or validated license.

[651] *See* Statement of Covington and Burling before the Industry and Trade Administration of the Department of Commerce, U.S. Export Weekly (BNA)

The Carter Administration stated its intention to impose extraterritorial controls sparingly and only after weighing their "foreign relations costs."[652] Indeed, the foreign policy controls imposed near the end of President Carter's term of office—even given the emotional atmosphere of the Iranian crisis and the Soviet invasion of Afghanistan—did not extend to foreign subsidiaries and other controlled foreign entities.[653] Yet the existence of broad authority for extraterritorial controls still causes concern. The realities of the multinational corporation and the lack of foreign government cooperation in American controls seem almost to ensure that the authority will be used as American policy makers search for instrumental effectiveness or symbolic power. In addition, the conflict of the 1960s over exports to the People's Republic of China has not been forgotten abroad.[654] Any significant use of extraterritorial foreign policy trade controls would almost surely lead to serious political tensions.[655]

3. *Systemic Costs*

Systemic costs include those resulting from the effect of extensive foreign policy export controls on the system of rules governing international trade. The cornerstone of that system[656] —and of its major constitutive document, the General Agreement on Tariffs and Trade (GATT)[657]—is the principle of nondiscrimination among nations in trade matters. Political ex-

---

No. 241, at M-1 (Jan. 23, 1979). The proposed regulation apparently would not have imposed any new validated license requirements, however, because the operative licensing provision of the Export Administration Regulations, applying only to exports from the United States, would have been left unchanged. 15 C.F.R. § 370.3(a) (1980).

[652] *Amending the Trading with the Enemy Act: Hearing on H.R. 7738 Before the Subcomm. on International Finance of the Senate Comm. on Banking, Housing, and Urban Affairs*, 95th Cong., 1st Sess. 5 (1977) (statement of C. Fred Bergsten).

[653] *See* notes 604, 631-35, 644 *supra*.

[654] *See* Hacking, *supra* note 605, at 5-6.

[655] *See* Nash, *supra* note 611, at 180-83.

[656] STAFF OF THE SUBCOMM. ON INTERNATIONAL TRADE OF THE SENATE COMM. ON FINANCE, 93D CONG., 2D SESS., EXECUTIVE BRANCH GATT STUDIES 133 (Comm. Print 1974) [hereinafter cited as GATT STUDIES]. *See generally* G. CURZON, MULTILATERAL COMMERCIAL DIPLOMACY 57-69 (1965).

[657] General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. pts. 5, 6, T.I.A.S. No. 1700, 55 U.N.T.S. 194 (1950) (original text) [hereinafter cited as GATT]. The current text of the GATT appears in GATT, IV BASIC INSTRUMENTS AND SELECTED DOCUMENTS (BISD) (1969). The nondiscrimination principle appears most clearly in Article I of GATT, entitled "General Most-Favoured-Nation Treatment." *See also* J. JACKSON, WORLD TRADE AND THE LAW OF GATT 255-57 (1969).

port controls blatantly discriminate among nations in terms of their right to purchase American goods and technology. They may technically violate the terms of GATT and are certainly contrary to its underlying principles, although serious legal consequences are unlikely. Of more importance, serious economic and political consequences may result if political export controls create precedents for and expectations of broad deviations from the principle of nondiscrimination in trade.

Consider first the legal obligations of the United States under GATT. Although the best-known manifestation of the nondiscrimination principle is without doubt the Article I requirement of unconditional most-favored-nation (MFN) treatment for tariffs,[658] Article I also applies to all "duties and charges" and all "rules and formalities" applied to exports.[659] Further, Article XI prohibits any restrictions on exports other than duties and charges, and specifically prohibits export licenses.[660] One might argue that Article XI is subordinate to the EAA under the Protocol of Provisional Application by which the United States has adhered to GATT, but the law appears to the contrary.[661] The same argument cannot be made

---

[658] GATT, *supra* note 657, art. I, ¶ 1. Unconditional MFN calls for nondiscriminatory treatment of imports from a given nation whether or not that nation makes related tariff concessions to the United States. Conditional MFN, by contrast, calls for nondiscriminatory treatment only upon receipt of adequate compensation. *See* GATT STUDIES, *supra* note 656, at 133-35.

[659] GATT, *supra* note 657, art. I, ¶ 1; *see* J. JACKSON, *supra* note 657, at 499. The MFN obligation of Article I applies only to trade with GATT signatories. Not all of the Communist nations are signatories; the United States has either not consented to or has suspended the application of GATT to its trade with Communist signatories. The United States does have bilateral trade agreements that call for MFN treatment with several Communist countries.

[660] GATT, *supra* note 657, art. XI, ¶ 1. Article XIII, which prescribes rules for the administration of permissible quantitative restraints, establishes a nondiscrimination rule applicable to any "prohibition or restriction" on exports to GATT signatories. GATT, *supra* note 657, art. XIII, ¶ 1.

[661] GATT has itself never come into force, since the minimum number of states required by Article XXVI has never accepted it "definitively." J. JACKSON, *supra* note 657, at 60-61. All nations which apply GATT do so provisionally, either through the original Protocol of Provisional Application of the General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. pts. 5, 6, T.I.A.S. No. 1700, 55 U.N.T.S. 308 (1948), signed by the United States and 22 other nations, or through later protocols with similar language (former colonies becoming independent are deemed to apply the GATT through the protocols of the sponsoring parent nation). The Protocol of Provisional Application provides that signatory states will apply Part II of GATT "to the fullest extent not inconsistent with existing legislation." *Id.* at § 1(b).

The Export Control Act was not enacted until 1949, Act of Feb. 26, 1949, ch. 11, 63 Stat. 7 (expired 1969), and so was not "existing legislation" on its face. Prior wartime export control authorities had been extended until that date. *See* Berman & Garson, *supra* note 2, at 792 n.2. The Second Decontrol Act of as to Article I.[662] The exception provisions of GATT must therefore be considered.[663]

The "Security Exceptions" in Article XXI[664] are most closely applicable. Nothing in GATT is to be construed to prevent any signatory from taking any action that it considers necessary for the protection of its "essential security interests" if such action (1) relates to "fissionable materials," (2) relates to traffic in arms, ammunition and implements of war, or to trade in other goods when carried on, directly or indirectly, "for the purpose of supplying a military establishment," or (3) is taken in time of war or other international emergency.[665] These exceptions appear to permit virtually all current American national security controls.[666] Political controls on exports to

---

1947 authorized export controls to aid in carrying out American foreign policy, *see* SECRETARY OF COMMERCE, FIRST QUARTERLY REPORT UNDER THE SECOND DECONTROL ACT OF 1947 at 1 (1947), and other wartime legislation gave even broader power. Act of July 2, 1940, ch. 508, 54 Stat. 712, *as amended by* Act of June 30, 1942, ch. 461, 56 Stat. 463. One might argue that all subsequent export control legislation relates back to these statutes and is thus "existing legislation." The prevailing interpretation of the Protocol, however, is that only "mandatory" legislation (not mere "authorizing" legislation) can be saved by the "existing legislation" clause. R. HUDEC, WORLD TRADE AND THE LAW OF GATT 121-37 (1975); J. JACKSON, *supra* note 657, at 108-10.

[662] Article I is in Part I of the General Agreement and thus the "existing legislation" clause of the Protocol of Provisional Application, *see* note 661 *supra*, does not limit its application. *See* J. JACKSON, *supra* note 657, at 256.

[663] Article XI permits temporary export restrictions to deal with critical shortages of food or other essential products and restrictions necessary for the application of standards, grading, and the like. GATT, *supra* note 657, art. XI., ¶ 2. Article XX permits restrictions on imports and exports that are necessary to protect life, health, and public morals; that relate to gold or silver or products of convict labor, artistic or archaeological treasures, and the like; and that are essential to assure adequate supplies of various materials, among other exceptions. All of the exceptions of Article XX are subject to the requirement that restrictions not be applied in a manner constituting either "arbitrary or unjustifiable discrimination" between countries where the same conditions prevail or disguised restrictions on international trade. *Id.* at art. XX. Other exceptions to the nondiscrimination principle deal with particular balance of payments situations. *Id.* at art. XIV.

In the context of restrictions on access to supplies, the total of these exceptions has been said to make Article XI's ban on export licenses "virtually useless." C. BERGSTEN, *supra* note 131, at 25.

[664] GATT, *supra* note 657, art. XXI. Article XXI(c) permits a Contracting Party to act in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security. *See* note 2 *supra*.

[665] GATT, *supra* note 657, art. XXI(b). Article XXI(a) permits a Contracting Party to withhold information if it considers disclosure contrary to its essential security interests.

[666] Controls on the export of arms and nuclear material, as well as dual-use items "relating" to arms and nuclear material, seem clearly covered by the first and second clauses; no one would argue that essential security interests are not involved. Indeed, controls on dual-use items seem to have been contemplated by the drafters of GATT. *See* J. JACKSON, *supra* note 657, at 748.

military entities (in South Africa, for example) might fall within the language of the second clause if the quoted phrase is taken to refer to foreign as well as domestic military establishments. Here, however, the matter of "essential security interests" is much less clear. The embargoes and other trade controls instituted under the TWEA and the IEEPA[667] might fit under the "emergency" language of the third clause, though again it is not clear that "essential security interests" are involved.[668]

None of the Article XXI security interest exceptions, however, appears to cover the American restrictions on exports to civilian purchasers in Uganda, the embargo of police forces in South Africa, the controls on petroleum equipment sales to nonmilitary entities in the U.S.S.R., the embargo on sales to consignees associated with the Olympics, or similar political controls. Although these actions are probably violations of GATT, no action has been taken against similar political trade controls in the past. In one of the very few instances in which GATT has even considered political trade controls,[669] Czechoslovakia argued in 1949 that the American export licensing program was a breach of the MFN obligation of Article I; the United States defended on the basis of Article XXI, among other grounds.[670] The "infant GATT had neither the capacity nor the prestige to undertake a serious examination of U.S. cold war measures," and the United States was found to have breached no GATT obligation.[671] Discussion among the GATT signatories in that case and in subsequent cases turned on the point that "every country must have the last resort on questions relating to its own security."[672]

---

[667] *See* note 2 *supra*.

[668] Article XXI is enormously flexible, however, because it allows each nation to judge what is necessary to its own security interests. GATT, *supra* note 657, art. XXI(b) (introductory clause). *See also* J. JACKSON, *supra* note 657, at 748-52.

[669] The cases in which Article XXI has or might have figured are described in J. JACKSON, *supra* note 657, at 749-51. No decisions referring to Article XXI appear in the periodic supplements to BISD since the date of Professor Jackson's treatise.

[670] J. JACKSON, *supra* note 657, at 749-50.

[671] R. HUDEC, *supra* note 661, at 68. *See also* J. JACKSON, *supra* note 657, at 749.

[672] J. JACKSON, *supra* note 657, at 749. This statement was balanced with the admonition that contracting parties should not take any step that might undermine the General Agreement. *Id.* Ghana's objections to the accession of Portugal to GATT were partly based on this argument. Ghana saw the situation in Angola, then a Portuguese colony, as a threat to its security. *Id.* at 750-51.

Indeed, if history is instructive, it is unlikely that the question whether United States political trade controls comply with Article XXI will ever be squarely faced in GATT. In 1951, the American suspension of MFN treatment for European Communist nations again came before GATT, once more on a complaint by Czechoslovakia; the signatories simply "declared," without citing any provision of the agreement, that both nations were "free" to suspend their obligations toward each other.[673] The best interpretation of this declaration seems to be that the signatories recognized a *fait accompli* they were powerless to influence. As one national representative put it: "The General Agreement [is] a technical instrument to deal with technical trade problems"; the political issue before the signatories "was of a different order altogether."[674]

Even if American controls can almost certainly withstand or escape scrutiny under GATT,[675] the harm they may cause to the international trading system should be considered as a cost of their utilization. The framers of GATT, particularly the United States delegation,[676] believed that an open and nondiscriminatory world trading system[677] would allocate resources in the most efficient manner and contribute to increased world prosperity: "raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods."[678] Some also believed that open and nondiscriminatory trade was the best path to political cooperation and world peace.[679] Today, both goals remain as important as ever;[680] and while some of the earlier hopes for the results of free international trade now seem naive,[681] many continue to believe that free trade can make valuable contributions to both peace and prosperity.[682] The United States has at least formally continued to adhere to its belief in the principle of nondiscrimination.[683]

---

[673] *Id*. at 749-50.

[674] *Id*. at 750 (quoting GATT Doc. C.P.6/S.R. 13, at 4 (1951)).

[675] In the context of American controls, as in that of developing nations' restrictions on access to raw materials, "no effective framework of rules and institutional arrangements to deal with the trade policy problems arising from export controls has ever existed, and none exists today." C. BERGSTEN, *supra* note 131, at 4. Bergsten points out that GATT has taken no action against participants in the 1973 OPEC oil embargo, which he sees as a clear violation of Article I. *Id*. at 26.

[676] *See* K. DAM, THE GATT: LAW AND INTERNATIONAL ECONOMIC ORGANIZATION 12 (1970).

[677] The two related goals can be seen in the Preamble to GATT, which recites the intention of the Contracting Parties to reach their stated goals through arrangements "directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce." GATT, *supra* note 657, Preamble, ¶ 3.

[678] *Id*. at ¶ 2.

[679] *See* K. DAM, *supra* note 676, at 12 n.5.

[680] The importance of peace is obvious. On the continued importance of economic efficiency, see *id*. at 6. Professor Dam quotes Ragnar Nurske's apho-

It is true that the principle of nondiscrimination is riddled with exceptions, in GATT itself,[684] in United States practice,[685] and in the practice of other states. Indeed, the principle often seems to be under attack from all sides,[686] as developing nations call for preferential treatment,[687] as OPEC inspires na-

---

rism: 'The world is not rich enough to be able to despise efficiency." *Id.* at 9 (quoting Nurske, *International Trade Theory and Development Policy*, in Economic Development for Latin America 234 (H. Ellis ed. 1961)).

[681] *See, e.g.*, George Ball's dismissal of the idea that trade leads to peace, in *Senate Foreign Policy Hearings*, *supra* note 119, at 12, and Professor Dam's statement that modern economic research has shown some of the premises of GATT to be economically simplistic. K. Dam, *supra* note 676, at 5-7.

[682] *See, e.g.*, *House EAA Hearings Part I*, *supra* note 21, at 42, 48 (statements of Dimitri Simes, Marshall Goldman) (both Soviet experts believe that the best hope for American-Soviet relations is to involve the U.S.S.R. in the "matrix" of world trade); K. Dam, *supra* note 676, at 8-9; Baldwin & Kay, *International Trade and International Relations*, in World Politics and International Economics 99, 130-31 (C. Bergsten & L. Krause eds. 1975).

[683] The Trade Act of 1974, for example, echoed the language of GATT when it authorized American participation in the Tokyo Round trade negotiations in order to "foster economic growth . . . and full employment . . . and to strengthen economic relations between the United States and foreign countries through open and nondiscriminatory world trade." Trade Act of 1974, § 2, 19 U.S.C. § 2102 (1976) (amended 1979). *Cf.* Trade Agreements Act of 1979, § 1(c), 19 U.S.C. § 2502(2) (Supp. III 1979) (goal of fostering "the growth and maintenance of an open world trading system").

[684] Examples in GATT, *supra* note 657, include art. I, ¶¶ 1-2 (historical preferences); art. XXIV (customs unions and free trade areas); art. XXV, § 5 (waivers). *See* note 663 *supra*. In addition, the nontariff trade barrier codes emerging from the Tokyo Round also provide for non-MFN treatment of nonsignatories. *See* Hufbauer, Erb & Starr, *The GATT Codes and the Unconditional Most-Favored-Nation Principle*, 12 L. & Pol'y in Int'l Bus. 59, 68 (1980).

[685] For example, the Trade Act of 1974 requires the President to continue to deny nondiscriminatory tariff treatment to most Communist nations, Trade Act of 1974, § 401, 19 U.S.C. § 2432 (1976) (amended 1979); provides a special form of import relief for imports from Communist countries, *id.* at § 406, 19 U.S.C. § 2437; and provides for discriminatory treatment of nations that do not observe reciprocity. *Id.* at § 126, 19 U.S.C. § 2136.

[686] *See* Kramer, *Changing Principles Governing International Trade*, 8 J. World Trade L. 227, 227-32 (1974).

[687] *See, e.g.*, Declaration on the Establishment of a New International Economic Order, G.A. Res. 3201, 6 (Special) U.N. GAOR, Supp. (No. 1) 3, ¶ 4(n), U.N. Doc. A/9559 (1974) [hereinafter cited as Establishment of a New International Economic Order]; Charter of Economic Rights and Duties of States, G.A. Res. 3281, 29 U.N. GAOR, Supp. (No. 31) 50, arts. 18-19, U.N. Doc. A/9631 (1975) [hereinafter cited as Charter of Economic Rights and Duties]. One product of the pressure applied by the developing nations, the Generalized System of

tions controlling raw materials to pursue their political ends through the use of economic power,[688] and as calls for protectionist policies are regularly made.

Yet there is hope—and this may be the most that can be hoped for—that an open, nondiscriminatory trading system carries with it sufficient economic and political benefits that it will continue to be accepted as the framework for the bulk of world trade even while various specialized areas of divergence are established.[689] National security trade controls, for example, are universally recognized in theory and practice;[690] nondiscrimination can easily coexist with the kind of controls permitted by a moderate interpretation of Article XXI.[691] Similarly, the nondiscriminatory trading system can accommodate such relatively minor exceptions as those for public health measures and the protection of artistic treasures.[692] It can surely survive the occasional use of multilateral sanctions.[693] It now appears that the system can accept, with some strain, significant discrimination in favor of developing nations.[694] A significant degree of regionalism is also being digested.[695]

These particularized developments are significant, but more worrisome is the apparent growth of a belief among developed and developing nations alike that the open, nondiscriminatory trading system has, over its thirty-plus years, produced an unacceptable level of economic interdependence[696]—a state of affairs in which nations are so strongly af-

---

Preferences, was adopted by the United States in 1974. *See* Trade Act of 1974, §§ 501-505, 19 U.S.C. §§ 2461-65 (1976) (amended 1979).

[688] *See* C. BERGSTEN, *supra* note 131, at 10-14.

[689] *Cf.* Baldwin & Kay, *supra* note 682, at 117 (economic and political benefits of a minimum set of rules covering state conduct and responsibilities).

[690] *See, e.g.*, C. BERGSTEN, *supra* note 131, at 27; P. SAMUELSON, ECONOMICS 652 (11th ed. 1980).

[691] *See* notes 664-68 *supra* and accompanying text. *See also* Berman & Garson, *supra* note 2, at 890.

[692] *See* GATT, *supra* note 657, art. XX, ¶¶ (a)-(f). This statement assumes that the proviso in Article XX is enforced.

[693] *Cf.* G. SCHWARZENBERGER, INTERNATIONAL LAW AND ORDER 147-48 (1971) (exceptions on international public policy grounds).

[694] *See* K. DAM, *supra* note 676, at 247-48; Note, *Preferential Treatment: A New Standard for International Economic Relations*, 18 HARV. INT'L L.J. 109, 120-22 (1977); note 687 *supra* and accompanying text.

[695] *See, e.g.*, K. DAM, *supra* note 676, at 274-95; J. JACKSON, *supra* note 657, at 575-623; Baldwin & Kay, *supra* note 682, at 113-16.

[696] Economic interdependence is a necessary product of an open trading system. *See, e.g.*, J. JACKSON, LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS § 1.1, at 1-4 (1977); The Outlook for International Trade and the Management of Interdependence, Speech of Mr. Olivier Long, Director General of GATT, Foreign Trade Day of the Wholesale and Foreign Trade Association in

fected by external events that national governments can no longer control their own economies.[697] The growth of this belief threatens the foundations of the system, and no other deviation from the nondiscrimination principle seems more likely to accelerate its growth than the peacetime use of political export controls. Political trade controls affecting the entire range of commercial products and a growing number of target nations highlight the risks of economic interdependence, even for trade in peaceful goods, and equate economic interdependence with political weakness.[698] They tend to create a "control psychology" on a world scale.

Contributing to such a development would be shortsighted and self-defeating. The natural reaction of trading nations would be to increase their economic self-sufficiency and to reorient their trade to the nations least likely to interrupt it for political motives.[699] The result would almost certainly be a reduction in economic efficiency and world standards of living, especially to the extent that policies of economic self-sufficiency were pursued.[700] Political communication would be reduced and international conflict would be nurtured.[701] The possibility that multilateral economic sanctions could become an effective tool of international law enforcement would all but disappear.[702] To be sure, these catastrophic results will not occur merely because one more computer sale is prohibited. A widespread perception, however, that the foremost defender of the nondiscrimination principle has abandoned it in the hope of reaping short-term foreign policy benefits would prompt others to follow suit, impairing the future vitality of the trading system.

At the very least and quite ironically, an expanded commit-

Hamburg, Germany (June 21, 1979). It has been said that GATT was the product of "post war revulsion against the excesses of national separatism." H. STEINER & D. VAGTS, *supra* note 605, at 1149.

[697] J. SPERO, THE POLITICS OF INTERNATIONAL ECONOMIC RELATIONS 27-28, 72-73 (1977); *see* Cooper, *National Economic Policy in an Interdependent World Economy*, 76 YALE L.J. 1273, 1273-75 (1967).

[698] *See* Taubenfeld & Taubenfeld, *supra* note 405, at 194.

[699] *See* Galtung, *supra* note 344, at 412-13; notes 356-57, 415-25 *supra* and accompanying text. *Cf.* Doxey, *supra* note 430, at 161-62.

[700] *Cf.* Baldwin & Kay, *supra* note 682, at 130-31 (disruptive effect of "inward-looking approach"); Erb, *Controlling Export Controls*, 17 FOREIGN POL'Y 79, 83 (1974) (comparison of export controls with import controls of the 1930s); Wall St. J., Oct. 23, 1979, at col. 1 (reviewing contribution of economic nationalism to Great Depression).

[701] Baldwin & Kay, *supra* note 682, at 117, 130-31.

[702] *Cf.* notes 405, 415, 443 *supra* and accompanying text.

ment to foreign policy export controls would weaken the ability of the United States to attain one of its principal foreign policy goals: international access to supplies, a goal that depends on international control of discrimination in trade.[703] During the Tokyo Round, the developed nations pressed for negotiations on this issue, but discussions foundered on the developing nations' concern over the control of natural resources as an attribute of sovereignty.[704] The participants did agree on an Understanding Regarding Export Restrictions and Charges,[705] calling for GATT to "reassess" the provisions on export controls "as one of the priority issues" following the conclusion of the negotiating round. Negotiations on this issue will be difficult, and the adoption of firm rules in the near future is doubtful.[706] The issue is of extraordinary importance to the developed world, however, and the American negotiating position would be significantly strengthened by a record of diligent support for the principle of nondiscrimination.

V. THE EXPORT ADMINISTRATION ACT OF 1979

With the passage of EAA '79, Congress has attempted for the first time to limit presidential authority to control exports for foreign policy purposes. Bills introduced in both the House and Senate would have imposed even stricter limits than the Act,[707] but the Carter Administration opposed the most restrictive proposals as undue interference with its conduct of foreign policy.[708] The final legislation thus represents an effort to reconcile the desire of many in Congress to restrain the use of controls with the desire of the executive branch to maintain its flexibility.

---

[703] Negotiation of agreements providing assured access to supplies was a "principal United States negotiating objective" during the Tokyo Round. Trade Act of 1974, § 108(a), 19 U.S.C. § 2118(a) (1976).

[704] *See* GATT, THE TOKYO ROUND OF MULTILATERAL TRADE NEGOTIATIONS 108 (1979). On the issue of sovereignty over natural resources, *see*, *e.g.*, Permanent Sovereignty over Natural Resources, G.A. Res. 1803, 17 U.N. GAOR, Supp. (No. 17) 15, U.N. Doc. A/5217 (1963); Establishment of a New International Economic Order, *supra* note 687, ¶ 4(e); Charter of Economic Rights and Duties, *supra* note 687, art. 2, ¶ 1.

[705] Group "Framework," GATT Doc. MTN/FR/W/20/Rev. 2, pt. 5, at 5/1, *reprinted in* HOUSE COMM. ON WAYS AND MEANS & SENATE COMM. ON FINANCE, 96TH CONG., 1ST SESS., MULTILATERAL TRADE NEGOTIATIONS: INTERNATIONAL CODES AGREED TO IN GENEVA, SWITZERLAND, APRIL 12, 1979, at 390 (Joint Comm. Print 1979).

[706] *See* C. BERGSTEN, *supra* note 131, at 25-32.

[707] This is particularly true of the bills offered by the principal sponsors, Senator Adlai Stevenson and Representative Jonathon Bingham. *See* note 10 *supra*.

[708] *See, e.g., House EAA Hearings Part I*, *supra* note 21, at 685-87 (statement of Stanley J. Marcuss).

Three dimensions of the Act's approach to foreign policy controls are important: first, foreign policy controls are treated separately from national security controls; second, a statutory tone skeptical of foreign policy controls is established; and third, various substantive provisions attempt to restrict executive discretion. Analysis demonstrates, however, that, for all of its innovation, EAA '79 ultimately fails to impose any effective restraint on the Executive.

A. SEPARATION OF NATIONAL SECURITY AND FOREIGN POLICY CONTROLS

Separate treatment of the two principal types of controls can be traced to Representative Bingham's original House bill.[709] The House Committee on Foreign Affairs found that "the distinction between these two types of control has not been adequately made in the past," even by the executive branch, and felt that the two types "have different purposes and should be governed by different criteria and procedures."[710] Accordingly, national security and foreign policy controls are treated in distinct provisions of EAA '79—sections five and six, respectively. Each section authorizes the President to prohibit or curtail exports of goods, technology, and other information in order to carry out specified policies. For example, section six approves three policies in terms virtually identical to prior law: the use of export controls to further significantly the foreign policy of the United States,[711] the access to supplies policy,[712] and the anti-terrorism policy.[713] Sections five and six then establish separate substantive and procedural rules tailored to each type of control. The Act also requires the Commerce Department to maintain, as part of the CCL, a separate listing of foreign policy controls that shows the items controlled and the countries to which controls apply.[714] A unified

---

[709] H.R. 2539, 96th Cong., 1st Sess., §§ 5, 6 (1979), *reprinted in House EAA Hearings Part I, supra* note 21, at 813-53. Separation was adopted in the final House bill. H.R. 4034, 96th Cong., 1st Sess., §§ 5, 6 (1979). The Senate bill did not separate the two types as completely. S. 737, 96th Cong., 1st Sess. (1979). The Conference Committee adopted the House approach. H.R. CONF. REP. NO. 96-482, *supra* note 10, at 5-15.

[710] H.R. REP. NO. 96-200, 96th Cong., 1st Sess. 7-8 (1979).

[711] EAA '79, § 3(2)(B), 50 U.S.C. app. § 2402(2)(B) (Supp. III 1979).

[712] *Id.* at § 3(7), 50 U.S.C. app. § 2402(7).

[713] *Id.* at § 3(8), 50 U.S.C. app. § 2402(8).

[714] *Id.* at § 6(k), 50 U.S.C. app. § 2405(k). The items controlled are to be

CCL may be maintained so long as foreign policy controls are clearly identified, enabling exporters to distinguish them from national security controls.[715]

Public identification of foreign policy export controls is an essential first step in any attempt to circumscribe their use. Before EAA '79, merely to determine what foreign policy controls were in force required careful study of the CCL, the Regulations, the periodic reports of the Commerce Department, and any public statements by the State and Commerce Departments,[716] as well as a certain amount of guesswork. Now foreign policy-based validated license requirements can be identified as such, although there remains an element of mystery about certain licensing policies that involve foreign policy considerations.

Despite this welcome change, it will not always be easy to distinguish foreign policy controls from national security controls, because some controls imposed under the Act combine characteristics of each. The best examples are anti-terrorism and regional stability controls (particularly those aimed at a strategic area like the Middle East), and nuclear nonproliferation controls.[717] In these and other cases, the statutory scheme invites the Executive to choose one or the other characterization, either to avoid or to take advantage of particular statutory provisions. For example, by characterizing a control as national security-based, the Executive can avoid certain consultation, negotiation, and reporting requirements. Some members of Congress charged that the Carter Administration did just this in characterizing certain controls imposed on exports to the Soviet Union, in response to the invasion of Afghanistan, as national security-based.[718]

---

identified by the Secretary of State, with the concurrence of the Secretary of Commerce. Disputes between them are to be resolved by the President. *Id.*

[715] EAA '79, §§ 5(c), 6(k), 50 U.S.C. §§ 2404(c), 2405(k) (Supp. III 1979). *See* H.R. Conf. Rep. No. 96-482, *supra* note 10, at 47. The CCL issued as of June 25, 1980 identifies foreign policy controls separately. *See* 45 Fed. Reg. 43,010 (1980).

[716] The committees attempting to draft new export control legislation had to rely on testimony from those agencies to learn what controls were in effect. *See, e.g., Senate EAA Hearings Part I, supra* note 106, at 64-66, 191 (statement of Richard Cooper).

[717] *See House EAA Hearings Part I, supra* note 21, at 646 (statement of William Root); *id.* at 687-91 (statement of Stanley Marcuss).

[718] *See* U.S. Export Weekly (BNA) No. 290, at A-2 to A-3 (Jan. 15, 1980) (Sen. Stevenson and Rep. Bingham reported to have objected to characterizing post-Afghanistan technology controls as national security controls; congressional "sources" reported to have suggested it was done to avoid reporting under EAA '79, § 6, 50 U.S.C. app. § 2405 (Supp. III 1979)).

Alternatively, some controls can be characterized as based on both foreign policy and national security considerations.[719] Every item appearing on the CCL for reasons of national security, for example, has also been made subject to parallel validated license requirements in certain circumstances for two foreign policy purposes: nonproliferation and opposition to terrorism.[720] To the extent that the Act permits such overlaps,[721] much of the clarity it seeks will be lost.[722] Indeed, a new layer of confusion will be added, because the Act does not indicate whether the substantive and procedural rules of section five, section six, or both, apply to dual-purpose controls.[723]

B. STATUTORY TONE

EAA '79 contains a number of congressional findings, statements of policy, and other hortatory provisions that do not actually limit the authority delegated under the Act, but that do express Congress' desire to "emphasiz[e] the importance of exports to the United States economy and confin[e] the use of export control authority to instances where controls are essential."[724]

The congressional findings show most clearly how these provisions change the tone of prior law. In EAA '69, a single finding expressed concern that "unwarranted" controls could have damaging effects on the United States economy.[725] EAA '79 elaborates similar concerns in three paragraphs at the outset of the findings and specifically notes the economic costs of uncertainty in control policy.[726] The congressional declarations of policy set the same tone, providing that controls should be used "only to the extent necessary" to carry out the policies of the Act and then "only after full consideration of the impact on the economy of the United States,"[727] stating that uncertainty in control policy should be minimized.[728]

---

[719] Before EAA '79, some items on the Commodity Control List were said to be controlled for more than one reason. *See House EAA Hearings Part I*, *supra* note 21, at 687-91 (statement of Stanley Marcuss). Some were said to be controlled for export to Libya for several reasons. *Id*. at 34[illegible] (statement of William Root).

[720] *See* notes 115, 168 *supra*.

[721] *See House EAA Hearings Part I, supra* note 21, at 727 (statement of Victor Johnson).

[722] *See* U.S. EXPORT WEEKLY (BNA) No. 291, at A-4 to A-5 (Jan. 22, 1980) (describing confusion over whether the grain embargo of the U.S.S.R. was a foreign policy or national security control; Administration officials had claimed both foreign policy and national security justifications for the President's embargo order).

[723] *See House EAA Hearings Part I, supra* note 21, at 687-91.

[724] S. REP. NO. 96-169, *supra* note 282, at 3.

[725] EAA '69, Pub. L. No. 91-184, § 2(3), 83 Stat. 841 (codified at 50 U.S.C. app. § 2401(3) (1976)) (expired 1979).

[726] EAA '79, §§ 2(1)-(3), 2(6), 50 U.S.C. app. §§ 2401(1)-(3), 2401(6) (Supp. III 1979).

Potentially the most far-reaching of the hortatory provisions is the declaration of policy in section 3(10). This provision declares that exports should not be controlled except when necessary to further "fundamental" national security, foreign policy, or short supply objectives and then only when controls will "clearly" further such objectives.[729] Section 3(10) represents the first attempt in American export control law to address the homogeneity of the term "foreign policy." Most of the controls of the 1970s could probably have been imposed even if this section had been operative.[730] Nonetheless, the provision suggests that future export controls should be confined to situations in which the foreign conduct addressed (a human rights violation or act of terrorism, for example) is in some way of fundamental concern to United States policy. Section 3(10) also appears to require the Executive to establish that a proposed foreign policy control will "clearly" further its intended objective. Together, the two prongs of section 3(10) imply that, before a control is implemented, the Executive must (1) define the objective of the control, (2) find the objective to be fundamental, and (3) determine that the proposed control will clearly further the objective. Rigorous application of this analytic process would go far to prevent the development of the control psychology alluded to earlier.[731] Unfortunately, an expansive reading of section 3(10) is undermined by statements in its legislative history indicating that the subsection was not intended as a substantial change from prior law.[732]

In any case, hortatory provisions like the findings and policies of EAA '79 are easily disregarded by an Executive not sympathetic to the principles expressed. "Disregard" is not even necessary; the language of these provisions is sufficiently vague to be rendered ineffective through interpretation. As Professor Huszagh of the University of Georgia School of Law stated in testimony before the House, provisions like section 3(10) may bring about a "substantial philosophical reform," but are unlikely to create a successful "administrative reform."[733] The policies implicit in section 3(10) and other such provisions are not integrated into the substantive provisions of the Act; the identity and attitudes of the controllers are not affected by the Act; and there is no provision for review of export control decisions by any institution outside the executive branch.[734] There is thus little reason to expect any significant results from the hortatory provisions of EAA '79, reform-minded as they may be.

---

[727] *Id.* at § 3(2), 50 U.S.C. app. § 2402(2). The word "only" in the first phrase quoted was added by the Act.

[728] *Id.* at § 3(1), 50 U.S.C. app. § 2402(1).

[729] *Id.* at § 3(10), 50 U.S.C. app. § 2402(10).

[730] For example, EAA '69 specifically approved anti-terrorism and access to supplies controls, while § 502B of the Foreign Assistance Act made the promotion of human rights abroad a "principal goal" of American foreign policy.

[731] *See* text accompanying note 577 *supra*.

[732] *See House EAA Hearings Part II, supra* note 119, at 117-18 (statement of Rep. Fascell) (§ 3(10) was proposed by its drafter, Representative Fascell, as a "reassurance amendment" that "does not change the substantive or basic objective of the bill.").

C. SUBSTANTIVE PROVISIONS

The substantive limitations on executive authority, found principally in sections four and six of EAA '79, fall into six categories: (1) a general limitation based on foreign availability; (2) a list of factors that must be considered in any decision to impose, expand, or extend controls; (3) a requirement that reasonable efforts be made, before imposing controls, to achieve a desired foreign policy goal through negotiation or other means; (4) various consultation and reporting requirements; (5) automatic annual expiration of controls unless extended by the President; and (6) certain miscellaneous provisions.

1. *Foreign Availability*

Section 4(c) of the Act extends the foreign availability provision that formerly applied only to national security controls to foreign policy controls.[735] The President thus may not impose controls for foreign policy purposes on exports of items that he determines to be available "without restriction," in "significant" quantities, and of "comparable" quality, from foreign sources, unless he finds that adequate evidence has been presented demonstrating that the absence of controls would prove detrimental to American foreign policy.[736] The foreign availability provision governing national security controls, however, is tightened by the Act, as discussed below.[737]

---

[733] *House EAA Hearings Part I*, *supra* note 21, at 294.

[734] The original Bingham bill, H.R. 2539, 96th Cong., 1st Sess. § 6(e) (1979), would have permitted a congressional veto of new foreign policy controls by concurrent resolution. This provision was opposed by the Administration, *see House EAA Hearings Part I*, *supra* note 21, at 685 (statement of Stanley Marcuss), and was withdrawn by Representative Bingham himself. *See id.* (statement of Rep. Bingham). The provision was later restored by the subcommittee, *id.* at 770-73, and adopted by the House. *See* H.R. 4034, 96th Cong., 1st Sess., § 6(e) (1979). The measure was dropped in conference, H.R. REP. No. 96-482, *supra* note 10, at 46, except for certain controls on agricultural commodities. EAA '79, § 7(g)(3), 50 U.S.C. app. § 2406(g)(3) (Supp. III 1979).

[735] *See* text accompanying notes 358-66 *supra*.

Both the House and Senate reports on EAA '79 recognized that some foreign policy purposes can be served by export controls in spite of foreign availability[738]—generally, those justified by the symbolic rationale.[739] Both reports indicated, however, that national security controls, the only purpose of which is to deny access to controlled items, are substantially vitiated if the items are available from other sources.[740] Congress' differing perception accounts for the continuing difference between the two types of controls in the treatment of foreign availability. Yet neither the Act nor the reports distinguish between instrumentally motivated foreign policy controls and those with symbolic purposes, despite the fact that instrumental foreign policy controls are impaired by foreign availability in virtually the same degree as national security controls. As a result, the Act fails to require that adequate weight be given to foreign availability in the context of instrumental foreign policy controls.

The failure to distinguish the two forms of political control also affects other foreign availability provisions in the Act. When a foreign policy control is imposed, for example, the President must take "all feasible steps" to initiate and conclude negotiations for foreign cooperation.[741] Yet the provision fails to distinguish instrumental from symbolic controls, even though only the former may require successful negotiations over foreign availability to be effective. Negotiation may thus be required, with its possible political costs, when it is unnecessary.[742] On the other hand, even when negotiations do not eliminate foreign availability or are not pursued for reasons of foreign relations, the Act permits instrumental controls to be implemented.

---

[736] EEA '79, § 4(c), 50 U.S.C. app. § 2403(c) (Supp. III 1979).

[737] *See* note 745 *infra* and accompanying text.

[738] *See* S. REP. NO. 96-169, *supra* note 31, at 8-9; H.R. REP. NO. 96-200. 96th Cong., 1st Sess. 7 (1979).

[739] The House report mentions the "thumbscrew" hypothetical, H.R. REP. NO. 96-200, 96th Cong., 1st Sess. 7 (1979); the Senate report cites State Department testimony to the effect that the United States might wish to "distance" itself from acts of a foreign nation even in the face of foreign availability. S. REP. NO. 96-169, *supra* note 31, at 8.

[740] H.R. REP. NO. 96-200, 96th Cong., 1st Sess. 7 (1979).

[741] EAA '79, § 6(g), 50 U.S.C. app. § 2405(g) (Supp. III 1979). Congressional concern on this point stems in part from testimony by the Administration that other industrial nations had not been asked to cooperate with controls like the Uganda embargo and the restrictions on sales of petroleum equipment to the U.S.S.R. *See Senate EAA Hearings Part I, supra* note 106, at 208-11 (statement of Richard Cooper).

As mentioned previously, it might be counterproductive to require the Executive to negotiate over foreign availability in every case. Although the language "take all feasible steps" comes perilously close to just such a requirement, there is sufficient flexibility in the phrase to allow the Executive to avoid negotiations when they would have adverse foreign relations consequences.

Additionally, although the basic foreign availability standard in section 4(c) of the Act applies to both foreign policy and national security controls,[743] the national security provisions of section 5 more precisely define the degree of foreign availability that should inhibit controls.[744] Section 5(f) provides that a validated license requirement should be terminated (or a license granted), subject to the possibility of a presidential override, if the target nation can obtain items in sufficient quantity and quality that the control (or license denial) would be "ineffective in achieving [its] purpose."[745] The same test would be useful for instrumental foreign policy controls and might lead to more sophisticated foreign availability analysis. The "effectiveness" criterion, however, is not used in the foreign policy context, because no distinction between instrumental and symbolic controls is drawn.

The legislative history of EAA '79 demonstrates that the drafters were extremely sensitive to the Carter Administration's arguments that an emphasis on foreign availability might unduly restrain executive flexibility in implementing foreign policy. The State Department, for example, voiced concern that a foreign availability provision applicable to foreign policy controls would limit its flexibility to respond to "extreme acts" of other nations.[746] The Senate Banking Committee report concluded that the Department's concern was "unwarranted," noting that members of the committee agreed that foreign availability should not necessarily be given as much weight in foreign policy cases as in national security cases (even though the foreign availability provision, section 4(c), makes no distinction between them).[747] The report also stressed that section 4(c) would require the Executive only to determine whether foreign availability exists, and in appropriate cases to attempt to eliminate it through negotiations; it would not prevent the President from using foreign policy controls in spite of foreign availability.[748] The Committee's intention was only to require the President to learn whether controlled items were available elsewhere, not to limit his actions once that information has been gathered.[749] It is essential that the President determine the extent of foreign availability; and under the Act foreign availability must be "considered" in deciding whether to impose foreign policy controls.[750] Even so, the Act does little to reflect the impact of foreign availability on the effectiveness of instrumental controls.[751]

---

[742] Negotiations might be pursued to prevent other nations from reaping the benefits of trade that the United States decides to forego, but this will normally be a futile effort.

[743] EAA '79, § 4(c), 50 U.S.C. app. § 2405(c) (Supp. III 1979); *see* text accompanying note 735 *supra*.

[744] EAA '79, § 5, 50 U.S.C. app. § 2404 (Supp. III 1979).

[745] *Id.* at § 5(f), 50 U.S.C. app. § 2404(f). Section 5(f) requires the Secretary of Commerce to review on a continuing basis the foreign availability of all items subject to validated license controls for national security purposes and to suspend or terminate such controls if the controlled items are found to be available "in fact" in sufficient quantity and quality to make the controls "ineffective in achieving their purpose." EAA '79, § 5(f)(1), 50 U.S.C. app. § 2404(f)(1) (Supp. III 1979). This provision was designed to remove American controls before foreign competitors have captured a market. H.R. REP. No. 96-200, 96th Cong., 1st Sess. 10 (1979). Similarly, the Commerce Department must issue a validated license required for national security purposes if it determines that the items to be exported are in fact available to the purchasing country from outside the United States, and must then consider whether to terminate the validated license requirement completely. EEA '79, § 5(f)(2), 50 U.S.C. app. § 2404(f)(2) (Supp. III 1979).

Even these provisions, however, continue to permit validated license requirements and license denials in the face of foreign availability if the President determines that the absence of controls would be detrimental to national security. *Id.* at § 5(f)(1)-(2), 50 U.S.C. app. § 2404(f)(1)-(2).

2. *Decision Factors*

Central to the reforms under EAA '79[752] is a list of factors that must be considered before the President can impose any foreign policy export control: (1) the probability that the proposed control will achieve the intended foreign policy goal in light of such factors as the foreign availability of the items proposed for control; (2) the compatibility of the proposed control with other foreign policy objectives of the United States and with overall United States policy toward the proposed target nation; (3) the reactions of third countries to the proposed control; (4) the likely effects of the proposed control on the export performance of the United States, on its competitive position in the international economy, on its international reputation as a supplier of goods and technology, and on individual American companies and their employees and communities, including the effects of the controls on existing contracts; (5) the ability of the United States to enforce the proposed control effectively; and (6) the foreign policy consequences of not imposing the control.[753]

---

[746] S. REP. NO. 96-169, *supra* note 31, at 8.

[747] *Id.* at 9.

[748] *Id.*

[749] *Id.* at 8-9.

[750] *See* text accompanying notes 752-56 *infra*.

[751] On the positive side, the Act requires the OEA to establish the capability to investigate and monitor foreign availability, and requires other agencies involved in the control process to share information with the OEA. EAA '79, § 5(f)(5)-(6), 50 U.S.C. app. § 2405(f)(5)-(6) (Supp. III 1979).

[752] Similar provisions were included in the bills passed by both houses. S. 737, 96th Cong., 1st Sess. § 4(a)(2)(C) (1979); H.R. 4034, 96th Cong., 1st Sess. § 6(b) (1979).

This list is thoughtful, and it includes most of the considerations of effectiveness and cost discussed in Part IV of this Article. Two aspects of effectiveness are addressed in factors one and five. The enforceability of controls (factor five) is in most respects a mechanical matter, but sympathetic consideration of this issue should lead to continued restraint in efforts to control reexports, exports by foreign subsidiaries, and transactions between persons within a target nation. Consideration of the probability that a proposed control will achieve its intended foreign policy purpose (factor one) is essential. The Act, however, does not require the Executive to spell out its objective, or even to state whether it is essentially instrumental or symbolic.[754] Without any requirement that the goal of a proposed control be stated, it is virtually meaningless to require the Executive to assess whether the control will be effective in reaching its goal.

The focus of factors one and five on foreign availability and enforceability indicates that the drafters were contemplating instrumental controls. The Administration had argued, however, that considerations of effectiveness were less important in the case of symbolic controls; if Congress required such factors to be considered in all cases, flexibility in the use of symbolic controls might be lost.[755] Here again, Congress attempted to accommodate the use of symbolic controls by permitting the Executive to disregard considerations of effectiveness, but allowed it to disregard them when considering instrumental controls as well. The Senate report, for example, carefully notes that the "decision factors" listed in the Act are not criteria that must be met by any proposed control, but are only factors to be considered; having once considered them, the President is free in all cases to disregard any of them.[756] Further, no attempt is made in the Act to require the Executive to consider whether symbolic controls will be effective on their own terms as expressions of American disapproval or moral outrage over foreign actions.

---

[753] EAA '79, § 6(b), 50 U.S.C. app. § 2405(b) (Supp. III 1979).

[754] This is true even though Congress noted that the goals of foreign policy controls had often been questioned as unclear. *See* H.R. REP. NO. 96-200, *supra* note 479, at 5.

[755] *See House EAA Hearings Part I*, *supra* note 21, at 686 (statement of Stanley Marcuss).

The Act requires consideration of the costs of controls to the United States in both economic terms (elements of which are summarized in factor four) and political terms (included in factors two and three). Political costs, however, are not fully recognized; in particular, the larger issue of impairing the open, nondiscriminatory trading system is disregarded entirely.[757]

The Act also fails to require the Executive to weigh the economic and political costs of a proposed control against the importance of its objective and the ability of the control to achieve that objective. Such a comparison would be difficult in any event because the Act does not require a clear statement of objective; even in the report that must be submitted after imposing a foreign policy control,[758] the President does not have to state the purpose of the control or balance its anticipated results against its costs.

The House bill would have been a substantial improvement in this regard. While the decision factors in that bill were similar to those ultimately included in the Act, the information to be reported to Congress after imposition of a control would have been more extensive and better organized. The President would have been required, first, to give reasons why he had imposed the control, the purposes sought to be achieved, and the conditions under which the control would be removed, and second, to specify how consideration of the factors set out in the bill, including cost factors, had led the Executive to determine that "on balance" the control would further the foreign policy interests of the United States.[759] One may quarrel with specific language in the bill, but it was superior to the Act in requiring the Executive to state its objective and balance the costs of a control against the value of that objective.[760]

---

[756] The President may deem certain factors irrelevant, but even if he admits their relevance § 6(b) "would not preclude the President . . . from imposing or maintaining export controls regardless of his conclusions with respect to the factors listed." S. REP. No. 96-169, *supra* note 31, at 8-9. *See also House EAA Hearings Part I, supra* note 21, at 727-28 (statement of Rep. Bingham) ("We want to make perfectly clear that, while we want the administration to consider these points, the administration then can impose the control anyway.").

[757] A sympathetic administrator could consider the issue under the rubric of "foreign policy" in factor two, but the issue was rarely discussed in Congress, and it is fair to say that it was not intended to be covered in the Act.

[758] EAA '79, § 6(e)(1), 50 U.S.C. app. § 2405(e)(1) (Supp. III 1979).

3. *Exhaustion of Other Means*

EAA '79 requires the President to determine, before "resorting to" the use of controls, that "reasonable efforts" have been made to achieve the relevant policy goal through negotiations or other means.[761] The use of the phrase "resort to" connotes a view of export controls as a foreign policy tool of last resort, to be used only when other methods are not available or have proven ineffective.

As with the access to supplies and anti-terrorism policies, this provision is laudable. Certainly when an instrumental export control is proposed, the Executive should be required to attempt negotiation with the target state before turning to as hostile and coercive a tool as trade sanctions. Given the political and economic costs and long term disruption resulting from export controls, it also seems reasonable to require that less costly coercive steps, such as disqualification from military or economic assistance, be implemented before exports are controlled. This is not to say that export controls should never be used, but rather that less coercive and less costly methods should be attempted, or at least fully considered, first.

When a symbolic purpose is advanced for a proposed control, it seems all the more reasonable to require the exhaustion or full consideration of less hostile and less costly means of expression before private economic transactions are interrupted to signal national displeasure. At times, the government of the United States may well determine—for the sake of its reputation in the world community or its own self-esteem, or simply because it believes it right—to prohibit some forms of economic intercourse with another nation or certain of its institutions. These may well be morally sound and politically defensible decisions. The question is one of degree and frequency. Because of the sheer number of regimes, practices, and events with which some influential element within the United States might wish to express displeasure, it is simply wise and prudent policy to avoid overly rapid or excessive use of controls on private transactions as the instruments of expression—particularly given the economic and political costs not only of individual trade controls but of the practice of restricting trade. Morever, treating trade controls as the last or a later resort, reserved for egregious cases, would render them more effective symbols when they are called upon in that capacity.

---

[759] H.R. 4034, 96th Cong., 1st Sess. § 6(e)(1)-(2) (1979).

[760] This provision was modified in conference. H.R. CONF. REP. NO. 96-482, *supra* note 10, at 46.

[761] EAA '79, § 6(d), 50 U.S.C. app. § 2405(d) (Supp. III 1979). The Senate bill would have required the President only to "consider" other means. S. 737, 96th Cong., 1st Sess. § 4(a)(2)(C)(i) (1979).

Finally, it should at least be noted that many export controls—total export embargoes and controls on food exports, for example—impose hardship on the populations of target nations, often the very people who are the victims of the conduct the United States seeks to protest.[762] This fact also counsels restraint in the use of trade controls.

The "reasonable efforts" language of the Act stops far short of actually making export controls the measure of last resort.[763] To underscore the President's flexibility, the Act allows him, in the report submitted after a control is imposed, to give reasons for not having attempted negotiation or other alternate methods rather than describing their results.[764]

4. *Consultation and Reports*

The Act mandates that, before any foreign policy control is imposed, the Secretary of Commerce must consult with "appropriate" American industries with respect to foreign availability, the economic effects of controls, and other matters.[765] There seems to be nothing in the Act that prevents the Secretary from determining that no industry is appropriate, in circumstances, for example, when prompt action is perceived to be required,[766] although the legislative history tends to indicate that a total failure to consult would be improper.[767]

---

[762] *See* note 450 *supra*.

[763] The Administration opposed even the flexible requirement of prior negotiation in § 6(d) on the ground that it did not take account of situations in which fast action would be necessary to prevent an export harmful to United States policy. Spokesmen for both the State and Commerce Departments invoked the same example: an item useful in nuclear processes which, if exported, could violate the United States nonproliferation policy. *See House EAA Hearings Part I, supra* note 21, at 648 (statement of William Root); *id.* at 687 (statement of Stanley Marcuss). This example appears to confuse the imposition of new validated license requirements with licensing policy. Most sophisticated products and technology with nuclear applications are already subject to validated license requirements, and nothing in the Act purports to require negotiation before a license is denied. Negotiation is only required before new controls are imposed—to take a hypothetical case, before anti-terrorism controls are extended to Chile. Such a policy decision would rarely have the same urgency as a last-minute effort to prevent a particular export of dangerous goods. If it did (for example, when foreign policy controls applicable to the U.S.S.R. were quickly extended to Afghanistan), § 6(d) clearly allows the President to act swiftly.

[764] EAA '79, § 6(e)(2), 50 U.S.C. app. § 2405(e)(2) (Supp. III 1979).

The Act also requires the President to consult with Congress "in every possible instance" before imposing controls.[768] It was largely this provision that persuaded the conference committee to drop a concurrent resolution veto procedure that had been adopted by the House.[769] The Act, however, does not define "consultation" or impose any immediate sanction for failure to consult; nor do the reasons for such a failure have to be stated.[770]

Under the Act, whenever new controls are imposed or existing controls are extended or expanded, the President must immediately notify Congress and submit a report.[771] The report must specify the President's conclusions on the decision factors enumerated in the statute; state the results of negotiations or other alternate measures, or the reasons for not attempting them; and indicate how the controls will further significantly the foreign policy of the United States. Several shortcomings of this report have been analyzed above.

Finally, the Act requires an annual report on the export control program.[772] Along with general information and various data on other types of export controls, the report must include "detailed information" on the effectiveness of any export controls imposed under section six "in furthering the foreign policy of the United States."[773] Past Commerce Department export control reports were criticized by the General Accounting Office for not specifying the goals of foreign policy controls or assessing their effectiveness.[774] Although EAA '79 requires an assessment of effectiveness, the assessment can be made in general terms, without reference to a stated objective for each control, so that it may be of little value.[775]

---

[765] *Id.* at § 6(c), 50 U.S.C. app. § 2405(c).

[766] The Commerce Deparment opposed the consultation requirement on the same basis as it opposed the requirement of prior negotiation. *House EAA Hearings Part I, supra* note 21, at 687 (statement of Stanley Marcuss); *see* note 763 *supra*. The same analysis is applicable here.

[767] *See House EAA Hearings Part I, supra* note 21, at 728 (statement of Victor Johnson).

[768] EAA '79, § 6(e), 50 U.S.C. app. § 2405(e) (Supp. III 1979).

[769] H.R. CONF. REP. NO. 96-482, *supra* note 10, at 46.

[770] *See* EAA '79, § 6(e), 50 U.S.C. app. § 2405(e) (Supp. III 1979). The House Conference Report, H.R. CONF. REP. NO. 96-482, *supra* note 10, at 46, states that if consultation is not satisfactory Congress will reconsider the veto provision.

[771] EAA '79, § 6(e), 50 U.S.C. app. § 2405(e) (Supp. III 1979).

[772] *Id.* at § 14, 50 U.S.C. app. § 2413 (Supp. III 1979).

[773] *Id.* at § 14(a)(11), 50 U.S.C. app. § 2413(a)(11).

5. *Automatic Expiration*

The Act provides that all foreign policy export controls automatically expire one year after imposition unless the President extends them. Each extension is limited to a one-year period, but a control can be extended an unlimited number of times.[776] To extend any control, the President must again consider the decision factors spelled out in section six. The requirements of prior negotiation and prior consultation with industry and Congress are not applicable to extensions,[777] but a subsequent report must be filed with Congress.

President Carter extended most controls then in force on December 29, 1979, making a blanket determination that the absence of all controls extended would be detrimental to United States foreign policy notwithstanding foreign availability.[778] All of these controls, and all new controls imposed during 1980, have since been extended through 1981.[779]

The automatic expiration provision was intended to force the Executive regularly to review all continuing controls under the same criteria applicable to new controls.[780] The intent is laudable, but the criteria continue to suffer from the same weaknesses described above.[781] As President Carter's blanket determination on foreign availability demonstrates, presidential extensions are likely to be little more than formalities.

---

[774] *See* COMPTROLLER GENERAL REPORT 1979, *supra* note 363, at 18, 31; *cf. House EAA Hearings Part I*, *supra* note 21, at 259 (statement of J. Kenneth Fasick) ("However, the discussion on controls for foreign policy purposes in this report is brief and we believe inadequate because it does not discuss: one, the specific foreign policy goals that trade controls are supposedly designed to serve, nor two, whether they are serving these goals well or poorly.").

[775] EAA '79, § 14(b), 50 U.S.C. app. § 2413(b) (Supp. III 1979), requires certain information on controls other than or more stringent than "multilateral controls." This provision appears to have been aimed at national security controls exceeding COCOM levels, but as drafted it seems to apply to foreign policy controls, most of which are unilateral.

[776] *Id.* at § 6(a)(2), 50 U.S.C. app. § 2405(a)(2). Controls in effect on the adoption date of the Act were to expire on December 31, 1979, or one year after implementation, whichever was later.

[777] Section 6(a)(2) permits extensions "in accordance with subsections (b) and (e)." *Id.*

[778] *See* 45 Fed. Reg. 1595-96 (1980) (to be codified at 15 C.F.R. § 368). The following controls were extended: (1) crime control and detection devices, (2) the South African military and police embargo and certain other controls on exports to South Africa, (3) certain anti-terrorism controls on exports to Libya and other Middle East nations, (4) one regional stability control on exports to Libya, (5) controls on exports of petroleum equipment to the U.S.S.R., (6) all IEEPA embargoes (North Korea, Vietnam, Cambodia, and Cuba), and (7) all nonproliferation controls. *Id.* at 1596-97.

[779] 46 Fed. Reg. 1665 (1981).

6. *Miscellaneous Provisions*

The President is not authorized under the Act to control exports of medicine or medical supplies for foreign policy purposes.[782] In addition, two provisions restrict controls on the export of food: a policy statement favors minimizing such restrictions[783] and, more importantly, a provision buried in the "short supply controls" section of the Act allows Congress to overrule by concurrent resolution any control imposed on agricultural exports for either foreign policy or short supply purposes.[784] The Act further declares the intent of Congress that the Executive branch should not impose foreign policy controls on any export the principal effect of which would be to meet basic human needs;[785] this language appears to cover virtually all food exports. Yet despite its expressed concern with basic human needs, Congress was unable to terminate the grain embargo of the U.S.S.R. imposed early in 1980.[786]

The Act specifically authorizes continued controls on the export of crime detection equipment but authorizes the President to exempt nations whose conduct is consistent with the United States human rights policy.[787] Also included in the Act is a special anti-terrorism provision that arose out of concern with certain prior sales of aircraft and other vehicles to Libya and Syria.[788] The Commerce and State Departments are required to notify a named committee in each house before approving any license for certain major exports to any nation that the Secretary of State determines to have repeatedly supported terrorism.[789] Because of the Secretary's power over such determinations, the executive branch can in essence decide whether to notify the appropriate committees in advance; not surprisingly, controversy has already arisen over executive branch conduct under this provision.[790]

---

[780] S. REP. NO. 96-169, *supra* note 31, at 8.

[781] *See* text accompanying notes 752-60 (decision factors), 771 (report) *supra*.

[782] EAA '79, § 6(f), 50 U.S.C. app. § 2405(f) (Supp. III 1979). The House bill would have withheld authority to control food as well, stating that export controls should not be applied to exports which would meet "basic human needs." H.R. 2539, 96th Cong., 1st Sess. § 6(g) (1979). In conference, authority to control food exports was restored. H.R. CONF. REP. 96-482, *supra* note 10, at 14, 46.

[783] *Id.* at § 3(11), 50 U.S.C. app. § 2402(11).

[784] *Id.* at § 7(g)(3), 50 U.S.C. app. § 2406(g)(3).

[785] EAA '79, § 6(f), 50 U.S.C. app. § 2405(f) (Supp. III 1979).

[786] *See* U.S. EXPORT WEEKLY (BNA) No. 317, at A-7 (July 29, 1980). A move to cut funding for the grain embargo was defeated in the House by a vote of 279 to 135. *Id.* Those opposed to the funding cut stated "that it would have had little practical effect, but would have been embarrassing to the Administration in its stance against the Soviet Union." *Id.* The congressional veto power under EAA '79, § 7(g)(3) was unavailable, since the grain embargo was imposed by the President as both a national security and a foreign policy measure. *See* U.S. EXPORT WEEKLY (BNA). No. 292, at M-1 to M-3 (Jan. 29, 1980) (presidential report to Congress on Soviet grain embargo).

[787] EAA '79, § 6(j), 50 U.S.C. app. § 2405(j).

EAA '79 attempts to remove the National Security Council from any major role in export controls[791] and to involve more directly the Secretaries of Commerce, State, and Defense, along with other relevant agencies, in the decision-making process.[792] The Act exempts from the restrictions on foreign policy controls all controls imposed to fulfill "obligations of the United States pursuant to treaties . . . or . . . other international agreements."[793]

Finally, the Act continues the President's authority to control exports of all items "subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States . . . ."[794] The problem of extraterritorial application is thus destined to continue.

VI. APPROACHES TO REFORM

Congress must not be content with the foreign policy provisions of EAA '79. By attempting simultaneously to restrain executive discretion and protect executive flexibility, the Act creates little more than hortatory restrictions and an additional administrative burden. The Act's requirements of negotiation, consultation and reporting, its "sunset" feature, and its other substantive provisions, however, create the illusion that boundaries on executive discretion have been erected. This illusion may be gaining time for a control psychology to become more firmly rooted.[795]

---

[788] *See* H.R. Rep. No. 96-200, *supra* note 479, at 8.

[789] EAA '79, § 6(i), 50 U.S.C. app. § 2405(i) (Supp. III 1979) *as amended by* International Security and Development Cooperation Act of 1980, Pub. L. No. 96-533, § 111, 94 Stat. 3131; *see* note 169 *supra*. This is the only case where consultations regarding individual licenses are required.

[790] U.S. Export Weekly (BNA) No. 322, at A-6, A-7 (July 29, 1980) (proposed sale of Boeing aircraft to Iraq); *id.* at No. 313, at A-3 to A-5 (June 24, 1980) (proposed sale of engines to Iraq); *id.* at No. 306, at A-1 to A-3 (May 6, 1980).

[791] EAA '79, § 4(e), 50 U.S.C. app. § 2403(e) (Supp. III 1979); *see* note 31 *supra*.

[792] *See* EAA '79, §§ 6(a)(1), 6(a)(4), 10, 50 U.S.C. app. §§ 2405(a)(1)-(a)(6), 2409 (Supp. III 1979).

[793] *Id.* at § 6(h), 50 U.S.C. app. § 2405(h).

[794] *Id.* at § 6(a)(1), 50 U.S.C. app. § 2405(a)(1).

Although the Carter Administration began to recognize some of the economic and political costs of export controls and some of the constraints on their effectiveness,[796] it continued generally to believe that the Executive should be allowed flexibility in the use of export controls as tools of foreign policy,[797] free of legislative interference.[798]

Developments since the passage of EAA '79 confirm that a determined Executive can continue to curtail exports extensively in spite of the restraints now incorporated in the Act. The major developments, some of which have been referred to previously, have been:

(1) Most controls in effect when EAA '79 was adopted, and all controls imposed subsequently, have been extended beyond the dates on which they would have expired under the Act.[799]

(2) Anti-terrorism and nonproliferation controls were extended to all items requiring a validated license for national security purposes.[800]

(3) The partial embargo of South Africa was extended by requiring a validated license for all computer exports to most South African government agencies.[801]

(4) A number of controls were instituted in response to the Soviet invasion of Afghanistan. They included (a) a prohibition of most exports in any way related to the Moscow Olympics;[802] (b) an embargo on sales of grain, meat, and certain other agricultural products to the U.S.S.R.;[803] (c) a related em-

---

[795] *See* note 577 *supra* and accompanying text.

[796] *See* notes 376, 578-80 *supra* and accompanying text.

[797] *See, e.g., House EAA Hearings, Part I, supra* note 21, at 648-49 (statement of William Root); *id.* at 686-87 (statement of Stanley Marcuss).

[798] *See, e.g., House EAA Hearings Part I, supra* note 21, at 623 (statement of Frank Weil); *id.* at 686-87 (statement of Stanley Marcuss).

[799] 46 Fed. Reg. 1665 (1981); 45 Fed. Reg. 1595 (1980). All controls in effect at the end of 1980 were extended for one year, even though many of them had been in effect less than a year, to attain "consistency" and public participation in future reviews. 46 Fed. Reg. 1665 (1981).

[800] *See* notes 115, 168 *supra* and accompanying text.

[801] *See* note 241 *supra*.

[802] 45 Fed. Reg. 21,612 (1980).

[803] *Id.* at 1883, 8289. Validated license requirements were at first extended to virtually all agricultural products. The original understanding was that no licenses would be granted for exports of any commodity other than wheat and

bargo on exports of phosphates (used for fertilizer) to the U.S.S.R.;[804] (d) some new national security-based validated license requirements,[805] a tightening of licensing policy on many existing controls,[806] and the suspension and revocation of certain outstanding validated licenses;[807] (e) the extension of national security and foreign policy controls applicable to the U.S.S.R. to Afghanistan;[808] and (f) controls on certain exports to the Soviet Kama River truck plant.[809]

(5) Finally, a range of economic sanctions, including an export embargo, were applied against Iran. These controls were instituted under the emergency provisions of the IEEPA rather than under EAA '79.[810]

The Reagan Administration may change the direction of American foreign policy in important ways, but it would be a mistake to conclude that these changes will mean the end of the problems identified in this Article. There are strong indications that the new administration will not pursue the human rights policy with the enthusiasm of its predecessor, and trade

---

corn; licenses for exports of wheat and corn would be issued to an aggregate limit of 8 million metric tons for the period of October 1, 1979 to September 30, 1980. *Id.* at 1883 (to be codified at 15 C.F.R. 376.5). Subsequently, a three-tier licensing system was established: (1) certain commodities that could contribute to the Soviet Union's grain and livestock capacity remained subject to validated license requirements, 45 Fed. Reg. 8292 (1980) (to be codified at 15 C.F.R. Part 376, Supp. No. 2), and the general policy was to deny all licenses except those for wheat and corn exports not to exceed 8 million metric tons; (2) other commodities remained subject to validated license requirements, but licenses would be considered on a case-by-case basis in light of several specified criteria, including whether the export could be used as animal feed or diverted to other uses that would undermine the grain and livestock controls, 45 Fed. Reg. 8292 (1980) (to be codified at 15 C.F.R. Part 376, Supp. No. 3); (3) all remaining agricultural commodities were returned to general license status, but with an additional reporting requirement to permit monitoring by the OEA. 45 Fed. Reg. 8291 (1980) (to be codified at 15 C.F.R. Part 376, Supp. No. 1). President Reagan terminated the embargo on April 24, 1981. *See* Weisman, Reagan Ends Curbs on Export of Grain to the Soviet Union, N.Y. Times, April 25, 1981, at 1, col. 7.

[804] 45 Fed. Reg. 8293, 24,458 (1980).

[805] *Id.* at 29,568.

[806] U.S. EXPORT WEEKLY (BNA) No. 302, at A-13, M-1 (April 8, 1980); U.S. EXPORT WEEKLY (BNA) No. 300, at A-3 (Mar. 25, 1980); U.S. EXPORT WEEKLY (BNA) No. 290, at A-1, M-1 (Jan. 15, 1980).

[807] U.S. EXPORT WEEKLY (BNA) No. 290, at A-1, M-1 (Jan. 15, 1980) (suspension); note 536 *supra* (revocation).

[808] 45 Fed. Reg. 37,415 (1980).

[809] *Id.* at 30,617.

[810] Exports were prohibited in April 1980. Exec. Order No. 12,205, 45 Fed. Reg. 24,099 (1980). The prohibition was expanded in May 1980. *See* note 604 *supra*. Prohibitions on trade with Iran were terminated by Exec. Order No. 12,282, 46 Fed. Reg. 7925 (1981).

controls implementing the policy will surely decline.[811] On the other hand, the Reagan Administration appears committed to linking trade with political and military issues in the East-West arena, apparently on an instrumental basis.[812] Most dramatically, the President initially refused to terminate the Soviet grain embargo despite campaign rhetoric to the contrary. Further predictions are more uncertain. Secretary of State Haig has said opposition to international terrorism may take the place of human rights in American foreign policy;[813] broadly interpreted, the anti-terrorism policy could support extensive controls. Issues of access to supplies may well arise in the coming years. The relevant policy in EAA '79 is a broad and untested source of executive export control authority. Geopolitical concerns may lead to an expansion of regional stability controls. Promotion of human rights abroad is still by statute a principal goal of United States policy; domestic and international pressure will not permit the Reagan Administration to abandon the policy. New foreign policy issues, as revolutionary as human rights, may in time emerge. Changes of administration and substantive foreign policy, in short, do not necessarily lead to restraint in the use of trade controls as tools of national policy, and there remain numerous policy areas where an active Executive may wish to draw upon its authority under EAA '79.

The longer export controls remain a significant instrument of American foreign policy, the more difficult it will be to reverse the prevailing psychology. Congress must act soon to install a legislative mechanism that will permit the use of export controls in the relatively few situations in which they are appropriate, but will block their growth into an all-purpose, ultimately self-defeating response to the range of foreign developments of which the United States, or powerful factions within it, might disapprove.

Three approaches are realistically available. They are, in order of diminishing degree of executive discretion: (1) revising EAA '79 to tighten its restraints on the exercise of delegated authority; (2) requiring Congress to approve, or permitting it to disapprove, new foreign policy controls; and (3) repealing the delegation of executive authority to control exports for foreign policy purposes. Since no single approach appears capable of solving all of the problems analyzed in this Article, the discussion that follows will focus on the strengths and weaknesses of each, and will explain why the author has come to favor repeal.

---

[811] *See* N.Y. Times, Feb. 13, 1981, at A4, col. 1 (reflecting views of Ernest W. LaFever, nominee for Assistant Secretary of State for Human Rights and Humanitarian Affairs).

[812] *See, e.g.*, Wall St. J., Mar. 2, 1981, at 18, col. 1.

[813] *See* N.Y. Times, Jan. 29, 1981, at A10, col. 6 (transcript of news conference of Secretary Alexander M. Haig).

A. TIGHTER STATUTORY RESTRAINTS

Perhaps the most easily attainable alternative is the amendment of EAA '79 to strengthen its restrictive provisions. Amendment might take place upon the expiration of the Act in 1983 or even sooner if Congress were to conclude that the Act in its present form is unable to restrain the growth of foreign policy export controls.

Although some provisions of the Act could be usefully tightened—several possible revisions are suggested below—this approach has serious flaws. First, both the theoretical analysis in Part IV of this Article and the discussion of EAA '79 in Part V demonstrate that, in theory at least, an effective restraining statute would necessarily require the President to characterize any proposed political control as either predominantly instrumental or predominantly symbolic. Characterization of the control is necessary so that appropriate patterns of decision-making can be prescribed by the statute. Without such characterization, a statute must regulate all political controls under the same criteria, by either (1) imposing criteria lenient enough to permit symbolic controls, and thus failing to require adequate attention to considerations of effectiveness when instrumental controls are proposed (the weakness of EAA '79), or (2) requiring rigorous effectiveness analysis for all controls, in essence making symbolic controls impossible. At the same time, a requirement that a control be characterized as symbolic or instrumental would force the President to formulate the objective of the control; this would make effectiveness analysis more meaningful.

Under a statute that required characterization, the President might state, for example, that the objective of a proposed control was to convince the Soviet Union to withdraw its troops from Afghanistan or to deter further Soviet aggression.[814] Such a control would be instrumentally motivated, and the statute would accordingly require the Executive to analyze the likely effectiveness of the control and make a determination of effectiveness. The factors to be considered might include: (1) whether, or to what degree, the control is likely to be effective in denying the controlled items to the target, in light of such matters as foreign availability, import substitution, and enforceability; and (2) whether the control is likely to produce the desired change in the target nation's behavior, in light of the anticipated impact on its economy, its political situation, its ability to absorb costs, its capacity for retaliation, and the like.

---

[814] *See, e.g.*, U.S. EXPORT WEEKLY (BNA) No. 292, at M-1 to M-3(Jan. 29, 1980) (presidential report to Congress on Soviet grain embargo).

Alternatively, the Executive might state that the purpose of a proposed control was, for example, to disassociate the United States from the forcibly repressive elements of South African society, or to demonstrate American opposition to torture. Such a control would be symbolic, and much of the foregoing effectiveness analysis would be unnecessary. Instead, the Executive might be required to assess the importance of a symbolic gesture on the issue at hand and to estimate the effectiveness of the proposed control as a symbol of the American position.

Although the separation of instrumental and symbolic controls is crucial to analysis and to the structure of an ideal statute, it may be too pure a dichotomy to serve as a practical framework for legislation. The instrumental and symbolic rationales are essentially forms of motivation for the use of controls; they do not necessarily correspond to particular controls. Most controls probably partake of both rationales: for example, the purposes of the controls imposed in response to the Afghanistan invasion surely include (1) the primary objectives of imposing economic costs on the U.S.S.R. for instrumental, punitive, and deterrent reasons; (2) the secondary, symbolic objective of demonstrating American opposition to aggression; and (3) the tertiary, symbolic objective of demonstrating strength and resolve to the American electorate. A statute drafted to deal with such a complex of purposes would almost certainly be forced to err on the side of leniency in the same way as EAA '79. A requirement that all the purposes of a proposed control be spelled out might also be unwise: a statement of instrumental intent could stiffen resistance in the target nation, while a statement of mere symbolic intent could weaken the control in the eyes of its domestic advocates, the target nation, and other nations.

A second problem with simply revising the EAA format relates to the treatment of costs. A strengthened statute would necessarily require the President first to make a complete assessment of the costs of any proposed control—whether instrumental, symbolic, or some combination of the two—and then to determine that the anticipated value of the control to American foreign policy outweighed those costs. This change would in theory lead to a more rigorous weighing of costs against anticipated benefits than is required by EAA '79. In fact, however, even such a provision would necessarily permit such a wide range of judgment on the part of the Executive that it might be simply an exercise in futility. If no outside review of executive branch decisions were possible, the Executive could basically continue to do as it pleased.

If effective provisions for characterization of controls and weighing of costs were not feasible, the other improvements that might be suggested would be trivial. Among the possible changes are the following:

(1) The restrictive aspects of sections 3(2)(B) and 3(10) might be incorporated into the substantive portion of the statute, which would thereby provide that no foreign policy control could be imposed unless the President had determined that the control was necessary to further "significantly" a "fundamental" objective of American foreign policy and that it would have a reasonable likelihood of doing so effectively.

(2) The Executive might be required to determine, before imposing any political export controls, that all less restrictive or less costly methods of achieving its objective had either been found inappropriate in the circumstances or been tried and found insufficient. This would strengthen the "reasonable efforts" language of EAA '79.

(3) An abbreviated form of the original decision process might be required prior to a decision to extend a control about to expire under the Act's sunset provision.

(4) The Executive might be required to publish a statement of licensing policy for every new control—indeed for all current controls as well—and to revise the statements as necessary. Licensing policy is an issue almost totally neglected by EAA '79.[815] Most statements of licensing policy issued under such a provision would probably contemplate case-by-case determinations, but the statements could nonetheless spell out

---

[815] *But cf.* EAA '79, § 6(a)(3), 50 U.S.C. app. § 2405(a)(3) (Supp. III, 1979) (Secretary of Commerce must notify applicant whose license is denied of reasons for denial and how export could be modified to be compatible with controls).

the criteria that would be applied in licensing decisions as well as the foreign policy developments that would permit the control to be terminated. This would provide as much predictability as is realistically possible within the present framework.

In sum, while revision of the Act might be the approach to reform most appealing to Congress, it is wishful thinking to expect that tinkering with the format of EAA '79 will effectively restrain the Executive. Statutory prescription of a decisionmaking process is simply too mechanistic an approach to a complex political decision.

B. PARTICIPATION BY CONGRESS

One political mechanism for restraining executive action was enacted as part of EAA '79: if the President restricts any agricultural exports under the foreign policy authority of the Act, Congress may, within thirty legislative days, disapprove the President's action by concurrent resolution; upon the adoption of such a resolution the control ceases to be effective.[816] The House bill would have permitted congressional disapproval of all new foreign policy controls.[817] It would have established an expedited parliamentary procedure allowing consideration of the disapproval resolution by the appropriate committees and by both houses within sixty days. In conference, the congressional veto power was limited to foreign policy and short supply controls on agricultural products, but the conference report on EAA '79 indicated that if consultation by the Executive under the Act proved to be inadequate, Congress would "give further consideration to a congressional veto mechanism in subsequent legislation."[818]

A congressional review and veto procedure for all foreign policy controls would have several advantages as a method of restricting executive discretion. With the courts immobilized by the terms of EAA '79[819] and by the political questions doctrine and similar policies of judicial restraint,[820] at least some independent institution would review decisions of the executive branch against the criteria specified in the statute. Further, congressional review would allow the very body that has established those criteria to determine compliance with them and to invalidate action that exceeded their boundaries. It would permit an essentially political decision to be reviewed by a political body—one able to hear the views of affected interests and to weigh the complex factors involved in a control decision.[821] Finally, a congressional veto procedure would simplify the drafting of statutory criteria, because more general guidelines could be written into the EAA than might be acceptable absent review.

---

[816] *Id.* at § 7(g)(3), 50 U.S.C. app. § 2406(g)(3). A concurrent resolution does not require the signature of the President and is not subject to veto.

[817] H.R. 4034, 96th Cong., 1st Sess. § 6(e) (1979).

[818] H.R. CONF. REP. NO. 96-482, *supra* note 10, at 46.

[819] EAA '79 exempts virtually all functions under the Act from the Administrative Procedure Act, including the APA's judicial review requirements. EAA '79, § 13(a), 50 U.S.C. app. § 2412(a) (Supp. III 1979).

[820] *See* Daedalus Enterprises, Inc. v. Kreps, No. 78-893 (D.D.C. May 18, 1978), *aff'd*, No. 78-1442 (D.C. Cir. May 25, 1978); Note, *Accountability and the Foreign Commerce Power: A Case Study of the Regulation of Exports*, 9 GA. J. INT'L & COMP. L. 577, 610-16 (1979).

A congressional veto provision in the EAA, however, might create more problems than it would solve. Most importantly, the constitutionality of such a provision is subject to serious question.[822] Although a number of congressional veto provisions are currently in effect,[823] building such a controversial and constitutionally dubious device into the EAA would run counter to one of the main objectives of revising the Act in the first place: to provide greater certainty to those engaged in export trade.[824]

A congressional veto would also add an unwarranted element of complexity to the control process. Even business groups opposed to the use of foreign policy controls have decried the additional delay and confusion the procedure might produce.[825] The negative form of veto incorporated in the House bill and most other current statutes[826] would be the most disruptive of all. A negative veto procedure would permit a new control to be promulgated and enforced for many weeks while the American foreign policy apparatus, American exporters, and foreign buyers remained unsure whether it would be overturned by Congress. If it were overturned, two changes of control policy, not merely one, would take place within thirty or sixty days.[827]

---

[821] *See* H.R. REP. NO. 96-200, 96th Cong., 1st Sess. 7 (1979).

[822] *See* L. HENKIN, FOREIGN AFFAIRS AND THE CONSTITUTION 120-23 (1972). For a current review and analysis of the arguments and authorities on the constitutionality of the various congressional veto mechanisms, see Nathanson, *Separation of Powers and Administrative Law—An Intellectual Odyssey*, 75 NW. U. L. REV. 000 (1981) (forthcoming).

[823] Professor Jackson notes 19 provisions of various types in effect as of 1977. J. JACKSON, *supra* note 696, at 147 n.15 (1977).

[824] EAA '79, § 3(1), 50 U.S.C. app. § 2402(1) (Supp. III 1979).

[825] *See House EAA Hearings Part I, supra* note 21, at 206 (statement of Joseph Karth).

[826] *See* J. JACKSON, *supra* note 696, at 147 n.15.

Moreover, the legislative veto might not be a realistic limitation on the Executive.[828] Congress would be likely to exercise the veto only infrequently, because of the difficulty of assembling a congressional majority to overturn a control that directly affected only a limited segment of the economy. Congress might also be reluctant to overturn an executive judgment on foreign policy that was already communicated to foreign governments, because of the resulting disruption of diplomacy.[829]

Even if Congress did exercise its veto, considerable damage might already have been done. It is widely believed, for example, that the short supply controls imposed on soybean exports in 1973 led to considerable loss of faith in the United States as a reliable supplier of agricultural products even though the controls were quickly terminated.[830] Such shock effects cannot be totally abated by subsequent reversal of a control.

In sum, despite the advantages of having a second branch of government participate in export control decisions as a check on the Executive, the legislative veto, even if constitutional, seems to be an unworkable response to the problems identified in this Article.

C. REPEAL OF DELEGATED AUTHORITY

If the EAA's delegation of authority to control exports for foreign policy purposes were repealed, the President's authority under the EAA would be limited to national security and short supply controls. National security authority might be redefined—in the statute or by executive interpretation—to encompass certain regional stability, nonproliferation, and similar controls. Political export control authority would remain available to the Executive in two situations: (1) when the Security Council mandates economic sanctions (under the United Nations Participation Act);[831] and (2) when the President declares a national emergency (under the IEEPA and the National Emergencies Act).[832] In other situations, the Executive would be required to request statutory authority for political controls. This approach is at the same time the most thorough and the most sensible.[833]

---

[827] A positive veto procedure—requiring, for example, congressional approval within 60 days before a new control can be effective—could ameliorate some of these problems. If Congress disapproved of a control, it would avoid actual changes in control policy. It could assuage some of the uncertainties of dealing with a control already in effect but still subject to reversal by Congress. So long as the normal requirements for enactment of legislation were not followed, however, the constitutional problems would likely remain. *See* L. HENKIN, *supra* note 822, at 121-22. It is proposed below that actual legislation be required to implement a new control.

[828] *See House EAA Hearings Part I, supra* note 21, at 291 (statement of Arthur Downey).

[829] *See* L. HENKIN,, *supra* note 822, at 122-23.

[830] *See* UNITED STATES COMPTROLLER GENERAL, REPORT TO CONGRESS: UNITED STATES-JAPAN TRADE: ISSUES AND PROBLEMS 145-46 (1979).

The nondelegation approach has several advantages. First, its allocation of roles to the Executive and Congress fits neatly into the constitutional framework, unlike the legislative veto. Foreign policy would in the first instance be made primarily by the President. If the executive branch wished to further its policies through the regulation of exports—that is, of foreign commerce—it would have to seek permission from Congress. Once the requested authority had been granted, controls would be communicated to foreign nations and administered by the President, "the sole organ of the federal government in the field of international relations,"[834] without congressional interference.

Second, unlike the other approaches mentioned, the nondelegation approach would be relatively simple to effectuate and its procedures are familiar and workable.

Third, this approach recognizes that Congress is a more effective forum than the executive branch for assembling and exposing all the interests that would be affected by a proposed export control. Those interests that are affected economically—business, labor, and their representatives in state and local government[835]—have advanced strong views in past congressional hearings. Under the nondelegation approach, they would have a more timely opportunity to provide Congress with information on economic costs, foreign availability, and similar matters and to present their views on a control's importance to United States foreign policy. Interests favoring a particular political control would also participate, as they have in recent hearings, arguing for the importance of controls on crime detection devices and on exports to South Africa and Uganda. Congress would continue to benefit as well from testimony and written submissions from former government officials, academicians, and other concerned independent parties. Under the statutory approach, these views would be received before controls are implemented. The voluminous hearings held in recent years on EAA '79, on export policy, and on particular foreign policy controls leave a clear impression that all implications of a proposed control would be throughly aired before Congress reached a decision.

---

[831] *See* note 2 *supra*.

[832] *See* note 2 *supra*.

[833] Repeal of foreign policy export control authority has been suggested by others. It was recommended in 1967 by Harold Berman and John Garson in their leading article on export controls. Berman & Garson, *supra* note 2, at 882-83. The variety of foreign policy controls described here had not yet developed. The authors' recommendation was made in the context of the controls on East-West trade that then dominated the control program. More recently, repeal was recommended during House hearings on EAA '79 by Arthur Downey, a former Deputy Assistant Secretary of Commerce for East-West Trade and staff member of the NSC and the State Department. *See House EAA Hearings Part I, supra* note 21, at 252, 254, 290-91, 294-96. Mr. Downey's recommendation was not incorporated in any of the bills submitted to Congress, however, and did not receive extensive consideration.

[834] United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 320 (1936). *See generally* L. HENKIN, *supra* note 822, at 37-65.

[835] The National Governors Association has testified on export legislation and prepared a bill, H.R. 3154, 96th Cong., 1st Sess. (1979), submitted by Representatives Gibbons and Conable, containing a complete proposed Export Ad-

Fourth, controls enacted by Congress upon the President's recommendation might be more effective than those imposed by the Executive alone. Within the United States, broader popular support might result, especially among those adversely affected, if the whole machinery of government had been mobilized to implement a control after all interested views had been heard. Symbolic controls, in particular, might carry more force abroad and create greater moral and emotional satisfaction when implemented by joint action of Congress and the President.

Fifth, with judicial review unavailable, the representative branch of government seems the most appropriate locus for a political decision that will impose direct, adverse economic consequences on a particular group of persons in the hope of obtaining less definable benefits for the whole of society. In Congress, the affected interests can state their positions and their representatives can participate in debate and vote.[836] The representative character of the decisionmaking institution is particularly important because the United States generally does not compensate persons adversely affected by export con-

---

ministration Act of 1979. *See Senate EAA Hearings Part II, supra* note 250, at 2-5 (statement of Gov. William Clements, Jr.); *House EAA Hearings Part I, supra* note 21, at 586-87 (statement of Frederick Huszagh).

[836] Legislative representatives are currently involved primarily through sporadic intervention in particular control and licensing decisions. *See* Note, *supra* note 820, at 605; note 119 *supra*. *But see* note 855 *infra*.

trols for their losses.[837] Compensation only takes place ad hoc, a cynic might say, when the affected interests are unusually powerful, well-organized and vocal.[838] With little chance of ex post compensation, it is essential that affected interests have a voice *ex ante* in decisions on new controls, even though their position will not always prevail.

Sixth, because the President currently has greater peacetime, nonemergency power to restrict exports than to control imports or other private economic activities, the costs of conducting foreign policy fall disproportionately on United States exporters. Perhaps the broadest delegation of authority over imports, for example, permits the executive branch to "adjust" imports of any article which it determines to be imported in such quantities or under such circumstances as to threaten the national security.[839] Because this provision requires a finding of a threat to the national security, it cannot support as wide a range of import controls as that effected against exports under the foreign policy section of the EAA—to date it has been used only to restrict petroleum imports.[840] As the law now stands, the Executive is tempted to look first to export controls when seeking a foreign policy action simply because authority is readily available.

It should also be noted that Congress has refused to delegate under EAA '79 authority to impose a trade embargo[841] on the ground that an embargo is an act "of the gravest importance," an act of "economic warfare."[842] Trade controls short of an embargo, however, also carry serious foreign policy implications. Who can doubt the consequences for American relations with South Africa, for example, of the prohibition on exports to its military and police forces? Yet the Executive is authorized to impose such a prohibition on exports but does not have authority to institute an embargo of a small country with which the United States has little trade. In short, repealing the foreign policy authority of EAA '79 would rationalize American trade policy by requiring congressional authorization for most major political trade controls imposed in nonemergency situations.

---

[837] A relevant comparison is the trade adjustment assistance program that, as enacted in the Trade Expansion Act of 1962, was intended to compensate firms, workers and communities adversely affected by increased imports resulting from tariff concessions negotiated by the government. Trade Expansion Act of 1962, Pub. L. No. 87-794, § 102, 76 Stat. 872 (current version at 19 U.S.C. § 1801 (1976)). Since passage of the Trade Act of 1974, Pub. L. No. 93-618, §§ 222, 251, 271, 88 Stat. 1978 (current version at 19 U.S.C. §§ 2272, 2341, 2371 (1976)), a link to a tariff concession need no longer be demonstrated for eligibility.

[838] An obvious example is the government's willingness to assume, through the Commodity Credit Corporation, the contracts of United States grain exporting companies affected by the grain embargo of the Soviet Union in order to maintain grain prices. *See* U.S. Export Weekly (BNA) No. 293, at A-14 (Feb. 5, 1980). The estimated cost to the government of the contract assumption program was $2.5 billion. *Id.*

[839] 19 U.S.C. § 1862(b) (Supp. III 1979), first added by § 7 of the Trade Agreements Extension Act of 1955, Pub. L. No. 86-169, § 7, 69 Stat. 162, and reenacted in the Trade Expansion Act of 1962, Pub. L. No. 87-794, § 232, 76 Stat. 872, *as amended by* Trade Act of 1974, Pub. L. No. 93-618, § 127(d), 88 Stat. 1978. For recent regulations regarding proceedings under this statute, see 45 Fed. Reg. 55,711 (1980) (amending 15 C.F.R. Part 359).

[840] *See* United States Cabinet Task Force on Oil Import Control, The Oil Import Question §§ 106-109 (1970) (U.S. Sup't Docs.), *reprinted in* J. Jackson, *supra* note 696, at 947-49.

A number of objections to the repeal of foreign policy export control authority can be voiced. First, Professor Huntington and those sharing his views on executive power might argue that repeal would deprive the President of an important tool of foreign policy. In response, however, it should be noted that a wide range of measures would still be available. In the context of the human rights policy, for example, the State Department has spoken of the "rich mix of diplomatic tools" available to it[843] and of the numerous tangible steps it has been able to take in support of the policy.[844] Many of these measures do not interfere directly with private activity and do not carry the economic and political costs of export controls; even under the current legislative scheme they should ordinarily be used before resort to trade controls.[845] Further, the President would retain authority to impose political export controls and other economic sanctions under the IEEPA in times of emergency[846] and could obtain authority for export controls in nonemergency situations by convincing Congress of their importance.

---

[841] *See* H.R. REP. NO. 96-200, 96th Cong., 1st Sess. 13-14 (1979); H.R. CONF. REP. NO. 96-482, *supra* note 10, at 46.

[842] *House EAA Hearings Part I, supra* note 21, at 774 (remarks of Rep. Bingham) (comparing trade embargo to restrictions on sales of food and medicine).

[843] *Report on Human Rights Practice*, *supra* note 200, at 6.

[844] *Human Rights Hearings*, *supra* note 170, at 3-5 (statement of Mark L. Schneider). *See also* Shestack & Cohen, *International Human Rights: A Role for the United States*, 14 VA. J. INT'L L. 673, 682-701 (1974) (proposing a human rights agenda and a variety of policy tools).

[845] *See* note 761 *supra* and accompanying text.

[846] One might in fact criticize the approach to export control authority recommended here for providing an incentive to the President to utilize his emergency powers. One would hope that the formal limitations in the emergency statutes, *see* note 2 *supra*, and the political forces which a declaration of emergency would set in motion would restrain any impulse to declare emergencies too freely.

Second, it might be objected that this approach would deprive the Executive of flexibility in the conduct of foreign policy. To some extent, this is the same objection as the first. To the extent that it concerns the ability of the Executive to administer controls flexibly once they are imposed,[847] the answer lies in proper drafting of the legislation that implements particular controls. In mandating controls on crime detection devices, for example, Congress has left it to the Executive to define the products covered—this is an appropriate executive function. Moreover, EAA '79 granted the Executive greater flexibility to impose and terminate such controls as to particular nations in line with their human rights practices[848]—this too seems appropriate. Total flexibility in administering controls, however, would be undesirable. At the minimum, the Executive should be given policy guidelines, in line with standard delegation doctrine,[849] and should be required to publish a statement of licensing policy for every control in effect.

Third, some might object that Congress acts too slowly to utilize political trade controls effectively.[850] It is undoubtedly true that Congress often acts slowly, but it has acted with some dispatch on matters of this sort, an example being the Ugandan embargo. With well-informed oversight committees familiar with the workings of export controls[851] and well-informed foreign relations committees familiar with the proposed target and other nations potentially involved, Congress should be able to act with sufficient speed on executive proposals. Special legislative procedures, if necessary, could also be provided. The 1979 House bill, for example,[852] borrowed from the Atomic Energy Act a procedure by which Congress takes up disapproval (by concurrent resolution) of certain licenses for the export of nuclear material.[853] That procedure permits full congressional deliberation within sixty days; a similar procedure could be followed for action on executive requests for control authority.

---

[847] For a discussion of the objections to rigid, nondiscretionary export controls, see Note, *supra* note 200, at 324-25.

[848] EAA '79, § 6(j)(2), 50 U.S.C. app. § 2405(j)(2) (Supp. III 1979).

[849] *See* Note, *supra* note 820, at 596-60.

[850] *See House EAA Hearings Part I*, *supra* note 21, at 296 (statements of Rep. Pease, Arthur Downey).

[851] *But see* Note, *supra* note 820, at 603-08 (Congress does not effectively oversee the EAA).

[852] H.R. 4034, 96th Cong., 1st Sess., § 6(e) (1979).

[853] 42 U.S.C. § 2159(a) (Supp. III 1979).

Congress' relative lack of speed, moreover, can be seen as a virtue. A major reason why Congress would not act as swiftly as some might wish is the time required to perform those information-gathering and deliberative functions that are among the greatest advantages of legislative action: hearing the views of affected interests, considering alternative measures, weighing costs and benefits. Political trade controls should be imposed with caution, after adequate consideration of their short- and long-term economic and political consequences and a complete airing of views. The legislative approach promises to produce this kind of action more frequently.[854]

On the other hand, Congress has sometimes acted as hastily as the Executive. In the case of Uganda, for example, Congress overrode executive objections based on considerations of effectiveness to impose broad political trade controls. Further, such congressional actions have been and would continue to be unrestrained by any of the limits now imposed on the Executive by EAA '79. Yet the fact that Congress is already deeply involved in export controls[855]—from imposing an embargo on Uganda and requiring validated licenses for crime detection devices to exerting influence on particular licensing decisions—points to an additional virtue of the recommended approach: it would eliminate much of the duplication of authority between President and Congress that presently exists and that seems destined to grow as Congress plays a more active role in the area. Lodging political export control authority solely in Congress seems likely to result in more restrained use of export controls overall.

Fourth, members of Congress might object that the congressional workload is already excessive.[856] One would hope, however, that requests for authority to impose foreign policy export controls would be infrequent. Further, as noted above, Congress could establish committees and parliamentary procedures to deal with such requests expeditiously. Congress has in the past devoted a great deal of time to oversight of the Executive's use of political export controls, particularly in years when the EAA had to be renewed;[857] this demand on legislative time would at least in part be relieved. In any case, Congress already devotes a substantial amount of time to consideration of similar measures. Every year's foreign assistance appropriations legislation, for example, disqualifies several nations from various forms of aid or sets conditions on their eligibility, often after lengthy hearings. The frequency of these measures suggests that, if a presidential request for export control authority is truly important to the nation, time for its consideration can be found.

---

[854] *See House EAA Hearings Part I, supra* note 21, at 290, 296 (statement of Arthur Downey).

[855] An example of congressional involvement is a Senate effort to formally revoke a license for export of gas turbine engines to the Iraqi navy. *See* H.R. CONF. REP. NO. 96-1471, 96th Cong., 2d Sess. 45, *reprinted in* [1981] U.S. CODE CONG. & ADMIN. NEWS. 10,881, 10,889.

[856] *See House EAA Hearings Part I, supra* note 21, at 290 (statement of Rep. Bingham) ("the load on the legislative branch . . . is already intolerable)."

Finally, beyond these largely institutional considerations, it might be objected that repeal of foreign policy export control authority would deprive the United States of a powerful instrument for doing good—promoting human rights, opposing terrorism, and the like—in the interest of mere economic gain. Yet this Article proposes repeal not as a position of retreat on these important issues but rather as a position of prudence on the use of a dangerous policy instrument. It proposes repeal because no other scheme yet advanced seems capable of restraining the Executive from using political export controls instrumentally when they cannot be effective; use of political export controls in those circumstances is economically wasteful, perhaps profoundly so, and may be politically destructive as well. It proposes repeal because no other scheme yet advanced seems capable of curbing the use of controls as symbolic expressions; and beyond some unascertainable point, the symbolic use of controls may be even more wasteful and equally destructive. It is true that this Article proposes repeal in large part because of economic considerations, but no other scheme yet advanced seems capable of forcing the Executive to give sufficient weight to the costs it asks the American people, and those of other nations, to bear when it embarks on a program of controls. To paraphrase a quotation cited earlier, the world is not yet rich enough to be able to despise the economic implications of political export controls.[858]

---

[857] *See* Note, *supra* note 820, at 604. In 1979, for example, Representative Bingham's Subcommittee on International Economic Policy and Trade of the House Committee on Foreign Affairs devoted all or part of 16 days to hearings on EAA '79; the full committee met on seven additional days.

[858] *See* note 680 *supra*.

SPERRY

SPERRY CORPORATION
1290 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10104

G. G. PROBST
Chairman and
Chief Executive Officer

April 6, 1983

The Honorable Jake Garn
United States Senate
511 Dirksen Senate Office Bldg.
Washington, D.C. 20510

Dear Mr. Chairman:

I have been following with keen interest the activities of your Banking Committee and International Finance Subcommittee in connection with renewal of the Export Administration Act. As a major exporter of diversified products, Sperry is well aware of the EAA's shortcomings. Our Computer Systems unit, with whose Utah operations you are familiar, is particularly affected by the Act's extensive licensing requirements.

I share your concern over the "hemorrhage" of advanced U.S. technology to the East. This threat to our nation's security can be lessened only through precisely targeted control measures. A broadly cast export control net, such as we now have, promotes bureaucracy without measurably enhancing U.S. security.

Export controls must take into account the availability of products and technology from non-U.S. sources and must rely on multilateral cooperation for their strength. As the preeminent multilateral agency for the implementation of export controls, COCOM merits vigorous U.S. support.

Similarly, the key to effective foreign policy controls is a multilateral approach which recognizes that the availability of embargoed goods from non-U.S. sources neutralizes U.S. attempts to impose unacceptable costs on our foreign policy targets. The President has at his disposal an array of foreign policy instruments, other than the restriction of U.S. exports, which can be used to influence the behavior of foreign governments. Mandatory procedures are needed to assure that in each instance where foreign policy controls are contemplated, they have satisifed the evaluative criteria specified in the current Export Administration Act.

We in the business community have found the Export Administration Act to be an exceptionally frustrating regulatory apparatus. Its dismal performance in advancing America's national security or foreign policy interests has not justified the resultant erosion of U.S. competitiveness.

The effectiveness of U.S. controls would be enhanced by revising the Act to include the following key points.

- Eliminate the validated license requirement for the transfer of products or technology to COCOM countries.
- Confine controls on the transfer of "militarily critical technologies" technologies that are truly critical to maintaining a U.S. military advantge.
- Require a more compelling showing of foreign unavailability before imposing controls.
- Institute specific notice and consultation procedures prior to imposing export controls for foreign policy purposes.

You and your committee are to be commended for the sincere and methodical way in which you have approached your task. I look forward to working with you on behalf of a sensible export control policy.

Sincerely,

Jerry Probst

G.G. Probst

cc: ✓The Honorable J. Heinz

SPERRY CORPORATION
1290 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10104

G. G. PROBST
Chairman and
Chief Executive Officer

April 7, 1983

The Honorable John Heinz
United States Senate
276 Russell Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Heinz:

I have been following with keen interest the activities of your International Finance Subcommittee in connection with renewal of the Export Administration Act. As a major exporter of diversified products, Sperry is well aware of the EAA's shortcomings. Our Computer Systems unit, headquartered in Pennsylvania, is particularly affected by the Act's extensive licensing requirements.

The introduction of your bill to amend the Export Administration Act, S. 397, is a sound and commendable step towards boosting the effectiveness of U.S. controls. Your bill recognizes that the threat to our nation's security can be lessened only through precisely targeted control measures.

Export controls must take into account the availability of products and technology from non-U.S. sources and must rely on multilateral cooperation for their strength. Your proposal to raise COCOM to treaty status wisely seeks improvement in our existing multilateral mechanism for export controls.

We in the business community have found the Export Administration Act to be an exceptionally frustrating regulatory apparatus. Its dismal performance in advancing America's national security or foreign policy interests has not justified the resultant erosion of U.S. competitiveness.

You and your subcommittee are to be congratulated for the sincere and methodical way in which you have approached your task. I look forward to working with you on behalf of sensible export control policy.

Sincerely,

Jerry Probst

G.G. Probst

cc: The Honorable J. Garn

INTERNATIONAL CUSTOMS SERVICE, INC.

CUSTOMS BROKERS • AIR AND SEA FREIGHT FORWARDERS/CONSOLIDATORS • CARGO INSURANCE • LICENSING • SERVICES TO BANKING

April 6, 1983

PLEASE REPLY TO Corporate

The Honorable John Heinz
THE UNITED STATES SENATE
New Senate Office Building
Washington, D.C. 20510

Dear Senator Heinz:

Thank you for your February 22 letter and supporting information regarding the Export Administration Act.

Yes, our lost markets to ill conceived actions restricting our exports to the betterment of some of our allies must be corrected. It is quite apparent such unilateral action is not effective for its intended purpose and is detrimental to the commerce and strength of our nation.

I agree with the concept behind your bill that it is the American exporter who suffers. But, also it is the American worker/tax payer who suffers by loss of employment, reducing the tax base.

I am concerned, though, that by applying import restrictions as a possible deterrent to our "allies" who export restricted goods may only lead to their applying additional restrictions on U.S. goods.

We support your actions to strengthen U.S. trade.

Very truly yours,

INTERNATIONAL CUSTOMS SERVICE INC.

R L Waggoner

Robert L. Waggoner
President

RLW:pf

CORPORATE	2730 Monterey St., Torrance, CA 90503	P.O. Box 3547, Torrance, CA 90510	TLX 18-2383	TEL (213) 533-0022
BOSTON	Logan International Airport Terminal, East Boston, MA 02128	P.O. Box 225, East Boston, MA 02128	TLX 94-0782	TEL (617) 569-5585
CHICAGO	2458 Elmhurst Rd., Elk Grove Village, IL 60007	P.O. Box 66176, Chicago, IL 60666	TLX 72-8329	TEL (312) 595-2670
HARTFORD	101 Turnpike Rd., Windsor Locks, Hartford, CT 06096			TEL (203) 623-3369
HOUSTON	15734 Lee Road, Suite 1, Houston, TX 77032	P.O. Box 60867, Houston, TX 77205	TLX 77-5749	TEL (713) 446-8121
LOS ANGELES	10400 Aviation Blvd., Los Angeles, CA 90045	P.O. Box 90310, Los Angeles, CA 90009	TLX 67-3583	TEL (213) 776-1400
NEW YORK	175-11 148th Ave., Jamaica, NY 11434	P.O. Box 7, Jamaica, NY 11430	TLX 12-6760	TEL (212) 632-0200
NORFOLK	300 E. Main St., Suite 804, F & M Bldg., Norfolk, VA 23510	P.O. Box 3807, Norfolk, VA 23514	TLX 82-3440	TEL (804) 627-9958
SAN FRANCISCO	500 So. Airport Blvd., South San Francisco, CA 94080	P.O. Box 8524, San Francisco, CA 94128	TLX 34-0886	TEL (415) 588-4038

Cable Address: Interserv

FMC #804

Exclusive agents at all major ports

General Aviation
Manufacturers Association

Suite 801
1400 K Street NW
Washington, DC 20005
(202) 393-1500

STATEMENT OF
EDWARD W. STIMPSON, PRESIDENT
GENERAL AVIATION MANUFACTURERS ASSOCIATION
BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY
SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
ON
RENEWAL OF THE EXPORT ADMINISTRATION ACT
APRIL 14, 1983

The General Aviation Manufacturers Association represents 35 companies which manufacturer 95 percent of all general aviation aircraft, engines, avionics and component parts in the United States. Since 25 to 30 percent of our aircraft are sold overseas, the provisions of the Export Administration Act are very important to our members.

Basically our concerns and comments are in three areas:

1. Delays in Processing Export License Applications

While there have been some improvements in recent years, our members have encountered problems, particularly when expedited approval is required. Unnecessary delays still exist in the system. Prompt approvals are particularly important during recessionary times when the backlog of orders for new aircraft has, in most cases, virtually disappeared. In recent months, we have lost sales of aircraft that were ready for delivery because of delays in the licensing process. Since the price of a business jet aircraft is several million dollars, the loss of a single sale is significant.

2. Failure to Remove non-Strategic Items From the Controlled List

Most of the equipment on general aviation aircraft is readily available throughout the world and should not be controlled. The CoCom list should be revised to remove items for which there is no justification for controls. In some cases, manufacturers are actually exporting aircraft under general licenses and sending electronic equipment later, after validated licenses for that particular equipment is approved. This involves excessive red tape and costs.

3. Foreign Policy Determinations Apply to U.S. Exports, But our Foreign Competitors are Unrestricted and Sell Freely. For example...Brazil just negotiated the sale of 25 Xingu twin-turboprop executive aircraft with Libya for $104 million. Yet we are prohibited from selling aircraft to Libya while the U.S. has continued to buy oil from Libya so Quadafi can carry out his objectionable policies. The availability of foreign sources of supply raises serious questions as to why U.S. civil aircraft manufacturers are denied foreign market access with a resultant loss of jobs, while foreign manufacturers establish themselves in

markets that typically develop a long, profitable relationship with their aircraft suppliers.

The Challenge from Abroad: Increased Foreign Competition

Since 1979, we have seen a steady erosion of general aviation sales. This is attributed primarily to the worldwide recession, but the strong dollar abroad and high interest rates here at home have had an impact. Moreover, this erosion has also been affected by the increasing quality and availability of foreign-made aircraft, their attractive, subsidized financing, and the denial of selected foreign markets to U.S. manufacturers through the imposition of export controls.

Our world market share is being seriously challenged. U.S. business jets enjoyed a 74 percent world market share from 1975 through 1981, but in 1982 that share dropped to 63 percent. Not only are foreign jet manufacturers enjoying increasing sales overseas, they have successfully penetrated our U.S. market; 43 percent of the business jets sold in the U.S. in 1982 were of foreign manufacture.

Until recent years, the U.S. general aviation industry -- like the commercial jet transport industry -- faced only token competition from manufacturers abroad. We always enjoyed a favorable balance of trade -- until 1981 when, for the first time, the dollar value of airplane imports exceeded exports. This trade deficit recurred in 1982.

The conclusions to be drawn are clear: our foreign competitors are manufacturing highly-sophisticated, technologically-comparable civil aircraft. If a U.S. manufacturer is prohibited from selling in a given market, our foreign competitors will supply the products. In addition, our technology lead is often negated by the predatory financing offered by our competitors and by government-to-government trading practices.

CONCLUSIONS AND SUGGESTIONS FOR LEGISLATIVE CHANGES

1. The Department of Commerce Should Continue to Administer the Act

The Department of Defense already has sufficient authority, and lacks an understanding of civil aviation. Business aircraft do not have military implications.

2. The Statutory Time Limit on Licensing Procedures Should be Reduced Across the Board by One-Third

Section 10 of S-397 should be adopted. Further emphasis should be placed on "emergency approval" for expedited processing when a sale can be made immediately to a friendly country but might be lost without such prompt approval.

3. National Security Controls Should Only Apply When a Direct and Significant Contribution to the Military Potential of an Adversary Would be Made

Sec 3(2)(A) of the Act should be amended accordingly. Products which are readily available in the world marketplace should NOT be included.

4. Update the CoCom List

Items which have no strategic importance should be deleted from the list and the Congress should direct this action. Items readily available in the world marketplace should NOT be included. This would lead to a more realistic and practical application of Export Controls.

5. Foreign Availability as a Criteria

The provisions of Sec 2(C) of S-397 would provide ample evidence of foreign availability of a competitor's product in the world market. These provide good guidelines and should be adopted.

6. Foreign Policy Controls Should be Carefully Evaluated and Should be Applied Only When There is Ample Evidence That Such Controls are Necessary and Will be Effective.

It is illogical that U.S. aircraft manufacturers should be denied access to Libya while Libya is selling oil to the U.S.

and buying aircraft from Brazil. The criteria established by Sec 7 of S-397 are sensible.

7. Import Controls

The authorization to deny imports of those not in compliance with the act is only fair, and should be enacted.

SUMMARY

S-397 contains practical and innovative proposals that would streamline and clarify the Export Administration Act. We support this bill.

TESTIMONY
OF THE
NATIONAL MARINE ENGINEERS'
BENEFICIAL ASSOCIATION

BEFORE THE
INTERNATIONAL FINANCE AND MONETARY POLICY SUBCOMMITTEE
OF THE
SENATE COMMITTEE ON BANKING,
HOUSING, AND URBAN AFFAIRS

IN
SUPPORT OF
CURRENT ALASKAN OIL EXPORT RESTRICTIONS

PRESENTED BY:

JESSE M. CALHOON
PRESIDENT

APRIL 14, 1983

Mr. Chairman, I am pleased -- as President of the National Marine Engineers' Beneficial Association -- to testify in favor of retaining, indefinitely and without alteration, current restrictions on Alaskan oil exports.

I testify in favor of these restrictions for reasons of military and economic security, and for reasons of plain, simple common sense. If Alaskan oil exports to Japan are permitted:

- we will become more dependent -- by 15 percent -- on imports to replace oil sent to Japan; this is extremely shortsighted considering long-term predictions of decreasing global oil reserves and increasing global consumption;
- most of these new imports would have to come from Saudi Arabia since Mexico would not be able to furnish the required amount and quality replacement oil; we would thus replace a simple secure domestic transaction with a complicated three-way international deal involving increased dependence for our country on potentially unstable supply sources;
- we will pump oil exports out of Alaska faster than we are filling the Strategic Petroleum Reserve -- three times as fast under some plans;
- Japan will be able to improve, cosmetically, its balance of payments surplus ($17 billion in 1982) with the United States -- and thus increase exports to our country and delay changing the barriers it imposes on U.S. manufactured and agricultural products; furthermore, what kind of bargain will we be able to strike with Japan to sell them oil in the midst of a worldwide glut?
- we would cripple our national defense in a future crisis, having exported scarce domestic oil today and allowed to wither the multibillion dollar U.S. refining and transportation infrastructure geared to Alaskan oil; for example, every 100,000 barrels per day exported means 620,000 deadweight tons of secure U.S. tankers out of work;
- we would lose 3,000 to 20,000 jobs and hundreds of millions of dollars in our overall balance of payments -- depending on the amount of oil exported; government loan guarantees in excess of $1 billion would be jeopardized;

- o U.S. consumers each year would pay $1.7 billion more for oil; today Alaskan oil is sold for less in U.S. markets than comparable foreign oil;
- o we could, in a future oil crisis, be forced to cut off oil exports to Japan -- just when the Japanese need them most -- in order to fill domestic needs; the result would be diplomatically disastrous;

I would now like to amplify these conclusions in more detail.

I. Current Restrictions

Current restrictions, contained in Section 7d of the Export Administration Act of 1979, prevent the export of Alaskan oil except when the export clearly serves the U.S. interest, helps U.S. oil refiners, and benefits U.S. consumers. These restrictions require the President to report such findings to Congress and receive approval through a Congressional concurrent resolution within 60 days for the export to take place. This Congressional approval requirement is essential.

It should be emphasized that these restrictions do:

- -- provide the President with the sufficient flexibility to submit an export plan to Congress if he determines among other things that the American consumer will benefit;
- -- guarantee, through a two-House approval procedure, an affirmative and important Congressional role in the decision-making process regarding exports of Alaska oil;
- -- permit the President to respond to the nation's commitments to Israel under the bilateral oil supply agreement.

It should be emphasized as well that discarding these restrictions with the excuse that adequate restrictions are available in other laws, such as the Trans-Alaska Pipeline Act, is simply a smokescreen to allow exports -- for under all other relevant laws, the role of Congress is diminished.

II. Why Alaskan Oil Export Restrictions Should be Continued

Currently, all of the approximately 1.6 million barrels per day (b/d) of Alaska North Slope (ANS) oil currently produced is used in the United States. Approximately 800,000 b/d are bought by West Coast refiners; another 700,000 moves through the Panama Canal or the newly constructed Trans-Panama pipeline to Gulf and East Coast refiners; and the remaining 100,000 goes to the Virgin Islands.

At this point, no clear -- and certainly no agreed -- Alaskan oil export plan has been put forth by export proponents. Some talk of 100,000 barrels per day of exports; others talk of 800,000 barrels per day. Some talk of increasing Alaskan North Slope production and diverting this excess to exports. Some talk of selling the oil to Japan in a bilateral deal. Others talk of a swap that would involve exports to Japan in exchange for a like amount of increased imports from elsewhere -- with Mexico and Saudi Arabia being the two most likely sources. My remarks therefore will critique the general concept of Alaskan oil exports as well as elements of the specific variations that I mentioned above.

These proposals fly in the face of common sense. They are bad for our energy security, bad for our national security, bad for our relations with Japan and other nations, and bad for our economy.

A. Energy Security

- It simply does not make sense to me or to the American public to export oil when we already have to import approximately one-third of the oil we use, a fraction that is artificially low due to the current recession.
- It is equally illogical to hand more power over our oil prices and supply back to OPEC nations and Mexico just at a time when the worldwide grip of these nations appears to be weakening.
- Despite the current oil "glut," the United States could be faced with severe future oil shortages. Even in 1982, in the midst of a recession, the United States used 5.5 billion barrels of oil.

Permitting U.S. oil exports is extremely shortsighted. Shortage has followed glut twice (1973 and 1979) in the last decade. The International Energy Agency (IEA) warned in October 1982 of the possibility of a new oil crisis in the mid to late 1980s that would "deal a devastating blow" to the major industrial countries. Much of today's glut is associated with worldwide industrial recession, a condition that will not be permanent. The IEA also predicted that world oil demand would surge ahead of available supplies by as much as "9 million to 21 million barrels per day by the end of the century." In addition, Third World oil requirements are expected by the IEA to "rise significantly." The conclusions of the IEA are buttressed by a September 1981 GAO report which stated that the United States Government "is almost totally unprepared to deal with disruptions in oil imports." And I should draw attention as well to the words of Senator James McClure, Chairman of the Senate Energy Committee, who said more recently: "the United States is simply not prepared for a significant oil interruption".

-- Alaskan oil represents an important reserve available to assist our future energy security and national defense needs. Some advocates of oil exports argue that all we have to do is to pump more out of Alaska and send this extra amount to Japan while keeping the current amount going to the United States. This makes no sense whatsoever. We will only have to import more oil sooner at higher future prices. Alaskan oil is not an unlimited supply: Prudhoe Bay still holds over 9 billion barrels of crude, but this is being drained at the rate of 1.6 million barrels a day. I should note that a Congressional Research Service geologist, Joseph P. Riva, Jr., observed recently that Alaska could face "a fairly precipitous drop" in production by the late 1980s, perhaps to 1 million barrels per day. This secure U.S. source of supply should be saved as much as possible for future use. Dr. M. King Hubbert, a noted energy forecaster, estimates that by the year 2000 America will have pumped nearly ninety percent of the crude oil that will ever be recovered in the lower 48 states.

-- Promoting the concept that our nation has enough oil to afford exports will undermine public support for the Strategic Petroleum Reserve and for the development of new domestic resources. For example, under certain export plans for Japan, we would be pumping oil out of the ground for export at about three times the rate we are pumping it into the ground for storage. It should be noted that already the Reagan Administration's proposed Strategic Petroleum Reserve fill rates for FYs 1984-86 will delay for at least two years the achievement of a 500 million barrel reserve.

-- Permitting Alaskan oil exports would increase our energy import dependence thus increasing the percentage of oil from unstable or potentially unstable areas. According to the GAO, the United States imports relatively more Middle Eastern oil today (41 percent of total U.S. crude imports) than it did in 1973 (37 percent). The folly of increased oil imports is demonstrated by the fact that several years ago Iran was being promoted as the source of imports to make up for Alaskan oil sent to Japan. Today, many proponents see Mexico as the source -- an equally dubious proposition in view of that nation's potential economic, political, and social instability. The case for Saudi Arabia, which others propose as a source, is certainly no stronger.

-- Mexico's Mayan crude (if this oil is used to replace Alaskan oil in a swap plan) is of inferior quality to Alaskan crude, more difficult to refine, and produces a lower yield of desired products per barrel refined.

B. National Security

-- Alaskan oil represents a vital source for defense needs, helping to assure that essential national energy requirements can be met in a future conflict or worldwide energy shortage. With our own Alaskan oil today, we control the source and the transportation; with imports we control neither. It should be noted that even in peacetime the operation of our nation's defense establishment requires nearly 500,000 barrels of oil per day. Export of Alaskan oil could seriously compromise the surge capacity of our industrial base.

-- The use of Alaskan oil in our East, Gulf, and West Coast markets helps preserve the essential infrastructure of refineries, pipelines, and transport ships that would be needed if a future emergency required the full use of Alaskan oil production. This infrastructure would atrophy as oil exports increased, and it could not be easily or speedily put back in place. For example, as much as 1.6 million barrels per day of secure U.S.-flag ship oil carriage capacity could be lost — severely limiting our capacity to transport oil during a supply disruption.

-- The export of Alaskan oil in exchange for oil obtained from other import sources would significantly reduce the size of the U.S.-flag tanker fleet. The Maritime Administration estimates that approximately 620,000 dwt of tankers would lose employment for every 100,000 barrels per day of oil exported from Alaska. The U.S.-flag merchant fleet is already dangerously small in size according to the testimony of our senior military officers. Reducing this fleet even further, forcing us to depend even more on foreign-flag tankers that may be politically and militarily unobtainable in a future emergency, would be a strange action indeed for an Administration that says it is dedicated to strengthening the defense of America. In October 1980 at St. Louis, candidate Ronald Reagan said: "Ninety-five percent of U.S. trade is carried in foreign bottoms. In time of crisis, will these ships be available? We simply don't know. When we find out, it may be too late."

-- Reducing the size of the U.S.-flag tanker fleet would further reduce the size of the U.S. shipyard mobilization base, already reeling from the cut-off of construction subsidies and the current prolonged worldwide shipping overtonnage. This base cannot be rebuilt quickly in the future, for the necessary skills, facilities, and infrastructure will have disappeared.

C. U.S./Japan Relations and Other International Considerations

-- Lifting the export ban would only provide Japan with more balance in its payments account with our country and hence the illusion of progress in removing trade barriers. Japan would thus be able to delay or avoid facing up to necessary changes in import practices which today impose barriers to U.S. manufactured and agricultural products. A trade imbalance cannot be rectified by allowing the country that has imposed import restrictions to ease those restrictions only for the commodities it needs (oil, coal, gas) while it continues to dump steel, electronics, and automobiles on our shores but retains strict limits on imports of similar products into its own domestic market.

-- Japanese interest in U.S. oil is lukewarm now in view of the current world oil glut. According to John H. Lichtblau, President of the Petroleum Industry Research Foundation, Inc., Japan wants Alaskan oil only "if there are no strings attached." Clearly, a time of oil glut is scarcely the moment for the United States to drive any hard bargains in arranging oil sales to Japan, or to expect much gratitude from the Japanese if we do sell. This point is further buttressed by a story in Oil Daily on April 7 in which the Deputy Director of Japan's National Resources and Energy Agency said that, "I think if transactions are commercially based, Japan would welcome [Alaskan Crude]...." He then said, "...but if the price is low enough...." The remarks presage some very tough bargaining, scarcely an open-arms welcome in which the grateful Japanese will make many concessions just to get our oil.

-- Japan would have less incentive to develop its own petroleum safety stocks if it began to rely on secure U.S. oil supplies being available in an emergency.

-- The export of ANS crude involves diplomatic risks in our relations with Japan that outweigh the alleged short-term gains. At present, with oil in plentiful supply, diplomatic gains would not be significant. However, once we begin the exports, we place ourselves in a particularly untenable position: in the event of a renewed international energy crisis, we would be forced to cut off oil exports — just when the Japanese would be most anxious for them. The result would be diplomatically disastrous, causing far worse relations with Japan than if the exports had never begun. The reverse would be equally disastrous: imagine the American public's reaction to renewed gas lines accompanied by media coverage of Japanese tankers loading U.S. crude at Valdez for export to Japan.

-- Additionally, U.S. oil companies should object to the proposed export because they could be forced, under certain circumstances for diplomatic reasons or to maintain a market in Japan once committed to it, to continue oil sales to Japan even if these sales became less lucrative than other alternatives. The recent experience of U.S. coal producers is instructive in this regard. U.S. coal suppliers have been forced to agree in their negotiations with Japanese steel mills to prices below the cost of production. The Japanese reportedly told at least one producer that if they did not agree to these low prices, they could forget about selling to that market in the future. As one U.S. coal export manager said: "All the cards are on their side of the table."

-- Canada can help Japan diversify its crude oil sources if Japan is truly interested in that goal. In fact, the Wall Street Journal, on January 27, 1983, reported that Canadian oil producers have already begun preliminary talks in this regard. One Canadian pipeline company says that it could handle 100,000 barrels of crude oil daily for export to Japan.

-- And, finally, we should not forget about Panama. Panama could lose millions of dollars in canal tolls and pipeline charges for Alaskan North Slope oil, adversely affecting our relations with that strategically placed nation and seemingly running directly counter to the goal of President Reagan, as shown with El Salvador, to provide bulwarks against Soviet and Cuban subversion in Central America.

D. Economic Costs

-- Export, for example, of 500,000 barrels per day of Alaskan oil now being shipped to the United States would result in GNP losses of $681 million per year and approximately 20,000 job opportunities foregone, according to a study published in October 1981 by the highly-respected economic consulting firm of Robert R. Nathan Associates, Inc.

-- More than 3,000 jobs of American seamen are at stake, depending on the amount of oil actually diverted to Japan. As of October 1, 1982, there were over 70 U.S.-crewed , U.S.-flag vessels, with an aggregate capacity of more than six million dwt, transporting Alaskan crude to Gulf and East Coast refineries. This represents more than 45 percent of the total deadweight tonnage of the U.S.-flag tanker fleet, or over 30 percent of the total deadweight tonnage of the entire U.S.-flag oceangoing fleet. (The entire U.S.-flag fleet of all oceangoing vessel types numbers only 569, of which 268 are tankers.) Already, there are over one million dwt of American Jones Act tankers in lay-up; permitting Alaskan oil exports would radically increase this figure.

-- Reducing the U.S. fleet by allowing exports to Japan would have a negative impact on the U.S. Treasury. Most of the ships currently operating in the Alaskan trade were constructed with loans guaranteed by the government. If 800,000 barrels per day were exported, the government would have to pay $443 million if these operators were forced to default on their loan obligations because the export trade eliminated their market. (If there were a ripple effect through the entire U.S.-flag tanker fleet due to depressed rates, the government could be liable to pay over $1 billion.) In addition to these amounts, the operators would also default on as much as $460 million in privately financed debt which would be deducted from the income tax bases of the debt holders. Moreover, the U.S. Government, which needs the vessels for national defense, would have to spend millions to acquire them. The end result, despite projected gains to the U.S. Treasury, would be a net loss to the Federal Government of more than $500 million in the 1983-86 period.

-- *Export of Alaskan oil would jeopardize the more than $4 billion investment that the major Alaskan North Slope oil producers, together with U.S. shipowners, have in U.S.-flag ships. The oil producers also have enormous contract commitments to supply the recently-completed Trans-Panama pipeline (39 percent of which is owned by Northville Industries.)* Sohio, Exxon, and Arco have already signed three-year contracts that commit them to payments of over $1 billion per year of pipeline use. These commitments combined with a higher windfall profits tax (based on a higher well-head price derived from lower transportation costs) would almost offset gains claimed to be forthcoming from the export. In fact, Charles J. Dibona, President of the American Petroleum Institute, stated recently: "It is not at all clear that economics favor exports."

-- *Alaskan oil exports without the current restrictions would result in a price increase for U.S. consumers.* Currently, Alaskan oil is sold in U.S. markets at prices that are below comparable grades of foreign oil. For example, on February 24, 1983, the delivered price of oil to Houston, Texas, was $27 per barrel for Alaskan North Slope, $29 per barrel for Mexican light, and $34 per barrel for Arab light. Replacing Alaskan oil with comparable foreign oil would, therefore, result in higher prices for American consumers -- about $1.7 billion per year.

-- *Although the U.S./Japan trade balance would be improved by Alaskan oil exports, the overall annual balance of payments loss to the United States would be over $400 million if we had to import oil to replace the Alaskan oil currently shipped to the Gulf and East Coasts.*

III. A Potential Compromise -- Making U.S.-Flag Carriage as Efficient as Possible

The only American party that really stands to benefit from Alaskan oil exports is the State of Alaska. If their oil were transported to Japan rather than the U.S. Gulf Coast, transportation costs naturally would be reduced and their revenues would rise. I would like to suggest a potential compromise -- one that the Administration actually has already proposed in a different context. This concerns a Department of Tranportation proposed rule change which would allow U.S.-flag tankers, built with construction differential subsidies (CDS), to repay the subsidy plus interest and gain access to operate in the Alaskan oil domestic trade.

This rule change would mean more competition in the domestic oil carriage trade, a more efficient fleet, and, thus, lower transportation costs for Alaskan North Slope oil. Today, even temporary domestic market entry of CDS-built tankers is limited. All 100-130,000 dwt tankers and above must be fully employed before any VLCCs are allowed into the trade. Yet VLCCs are able to carry oil at rates about half those of the 100,000-ton tankers, or $7.25 per deadweight ton per month versus $14.00 and more. The present situation simply makes no sense to me, and, in turn, creates an unnecessary burden that the maritime industry should not bear when it must continually justify the importance of the Jones Act against those who understand neither the importance of a U.S.-flag merchant fleet, nor the true meaning of national security.

Indeed, the continued threat of a turnabout on the question of permitting the export of Alaskan oil to Japan has discouraged companies from building and deploying the most efficient vessels for the trade. Thus, the solution that best meets the objectives of fleet efficiency and national security is indefinite extension of the Alaskan oil export restrictions now contained in the Export Administration Act of 1979, combined with allowing the market, unrestricted, to bring the most efficient method of U.S. transportation into the trade.

Proponents of Alaskan oil exports argue that both state and Federal treasuries would reap enormous revenues if domestic oil were sold abroad. I contend that nearly half the revenues the State of Alaska would accrue from oil exports will, in fact, be realized through this rule change. Lower transportation costs would mean more profit to the State of Alaska which owns and sells much Alaskan oil. In addition, CDS repayment would generate millions of dollars in state and Federal revenues. Simply put, transportation costs are subtracted from delivered (selling) price to calculate wellhead price, the figure upon which profit and thus state and Federal taxation is based. If the transportation component of total price shrinks, as it undoubtedly would under the proposed CDS repayment plan, and selling price remains constant (a likely outcome since oil prices are determined by many forces, the least of which is actual cost), the wellhead component would, of course, increase. Oil profits would clearly increase. It has been estimated that 28 cents of every transportation dollar saved will go to Alaska and 53 cents of that same dollar to the Federal Treasury.

Alaska now claims to be spending between $650 and $700 million annually on transportation. If a 25 to 30 percent savings could be achieved through CDS repayment (a fair conservative estimate), the state would experience an increase in revenues of between $50 and $100 million a year while up to several hundred million additional dollars per annum would land in the Federal coffers due to windfall profit taxation. These estimates are conservative and approximate because it is impossible to know exactly how many vessels will elect the repayment option, the exact impact repayment will have on transportation rates, and the exact volume of oil that will pass through the Trans-Panama pipeline.

The value of this solution is that both the State of Alaska and the Federal Government would receive increased revenues; the U.S.-flag tanker fleet would become more efficient; and we would preserve a vital national resource -- a strong U.S.-flag fleet, ready to serve in peace and in war.

V. Conclusion

Mr. Chairman, some call Alaskan oil exports a maritime issue. It is not; it is a national issue.

Mr. Chairman, some even ask me if I would drop my opposition to Alaskan oil exports if the oil were carried on U.S.-flag ships. Most emphatically, I would not, for we are talking about our nation's security.

We are talking also about foresight and plain common sense. This plan is shortsighted, and it defies common sense.

It is time to do away with these export proposals -- with the indefinite extension of existing restrictions on the export of Alaskan oil. It is time to encourage those who would invest millions in the most efficient U.S.-flag ships for this trade by removing Alaskan oil exports as a recurring threat every two years. And it is time to stop tempting those who place profit over patriotism.

Thank you, Mr. Chairman.

STATEMENT OF FRANK DROZAK

PRESIDENT

MARITIME TRADES DEPARTMENT, AFL-CIO

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY

SENATE BANKING, HOUSING AND URBAN AFFAIRS COMMITTEE

APRIL 14, 1983

Mr. Chairman and Members of the Subcommittee:

My name is Frank Drozak, and I am President of the AFL-CIO Maritime Trades Department, representing eight and a half million workers in forty-two affiliated trades who--at their February, 1983 Executive Board meeting--unanimously adopted a resolution in opposition to the export of Alaska oil. We appreciate this opportunity to testify in support of the reauthorization of the Export Administration Act, and in particular Section 7(d) which restricts the export of Alaska North Slope oil.

Let me briefly review the history of these restrictions so that this Subcommittee will appreciate their importance. When Congress enacted the Trans-Alaska Pipeline Act in 1973, to provide for construction of the oil pipeline, it forbade the export of Alaska oil traveling through that pipeline--unless it was approved by both the President and Congress.

The Arab oil embargo in 1973 and 1974 dramatically illustrated to the Federal Government the importance of providing domestic energy security for the United States. The reaction by our Government was to add to the Export Administration Act in 1977--and reaffirm in 1979--further restrictions on the export of Alaska oil transported through the Trans-Alaska pipeline. These restrictions still allow the export of Alaska oil, but only if both the President and Congress determine that the export would be in the nation's best interest and would not diminish our national energy security. We strongly believe that these restrictions are the best way to insure that Alaska oil is not exported unless it is absolutely the right course for our nation. Current law leaves final determination jointly to the Congress and the President.

Arguments are now being advanced--as they were in 1977 and 1979--that Alaska oil should be exported, and that the restrictions should either be relaxed or eliminated altogether. We believe that it would be a disastrous mistake to allow the export of Alaska oil. The export of ANS oil would mean substantial destruction of the U.S.-flag domestic tanker fleet, a major increase in maritime and related unemployment, a reduction in our national energy security, and a significant boost in the price that Americans would pay for oil.

Under current law, all Alaska oil is currently carried on U.S.-flag tankers. There are 80 tankers involved in the movement of Alaska oil--from Alaska down to the West Coast, through the Panama Canal and up to the Gulf and East Coasts. These 80 tankers represent 44 percent of our active domestic tanker fleet, and 65 percent of the total tonnage in our domestic Jones Act fleet.

Oil tankers are not only important to the transportation of domestic oil supplies, but are vital to the merchant marine's role in our national defense. This is clearly demonstrated by last year's conflict in the Falkland Islands. Three out of every four ships in the British fleet were private merchant ships manned by civilian crews. Of that total, nearly half were liquid-bulk tankers. These tankers--together with the other merchant ships--were essential to British success. This was made clear by Admiral John Fieldhouse, Commander-in-Chief of the British Fleet and Commander of the Falkland Islands Task Force. He said, "Without the ships taken up from the trade, the operation could not have been undertaken. . . ."

It is questionable whether the United States has a sufficient tanker capability to carry out a similar operation. Vice Admiral Kent J. Carroll, Commander, Military Sealift Command, is in the best position to know the ability of our merchant fleet. In the wake of the Falkland crisis, we should listen carefully when he tells us about our sealift shortage. In just this one area of tankers, he recently made the following observation:

> "Finding enough of the right type of fuel to support an overseas deployment and finding enough of the right type of U.S.-flag tankers to transport it is the new headache for military planners."

Under any export proposal, our domestic tanker fleet would be destroyed. Even if exports were carried on U.S.-flag vessels, this would only require six Very Large Crude Carriers (VLCC's). If this were to happen, estimates are that 35 to 40 tankers--57 percent of the tonnage in the Alaska trade--would be laid-up. The addition of the other 35 to 40 unemployed tankers into an already overtonnaged domestic tanker trade would drive tanker rates down to lay-up rates.

The destruction of the Jones Act tanker fleet could cost the Federal Government billions of dollars Federal loan guarantees under the Title XI shipbuilding program for Alaska trade oil tankers total $859 million, and there are $1.1 billion in loan guarantees on the rest of the domestic tanker fleet. These loans would become risks if Alaska oil is exported. There would be additional Federal costs such as unemployment insurance for the more than 20,000 workers that would be thrown out of work in shipping and related industries. There is also the lost income tax revenue from the businesses and employees that would be put out of work by Alaska oil exports.

Exporting Alaska oil would cost the American consumer over a billion dollars a year. For the past two years, domestic oil prices have been substantially lower than the average price of imported oil. This lower price has exerted downward pressure on overall energy prices in the United States. The export of Alaska oil, and its replacement by higher-priced imported oil, will remove this downward pressure and will result in overall higher oil prices. Estimates are that the increased cost to consumers will be at least $1.7 billion per year.

Supporters of Alaska oil exports have suggested that an oil "swap" be arranged. Under this proposal, Alaska oil would go to Japan, and Mexican oil destined for Japan would be re-routed to the United States. In the past, these same proponents suggested that the replacement oil could be imported from Iran. This new proposal is equally misguided. First of all, while Alaska oil exports could reach 800,000 barrels per day, Japan only imports 100,000 barrels a day of Mexican oil.

Second, the United States already imports more than half of Mexico's oil exports, and Mexico is very hesitant about becoming too dependent on income from one nation through its oil exports. It is therefore unlikely that Mexico would increase its oil exports to the United States.

Third, and perhaps most importantly, U.S. refineries simply cannot handle any more crude oil of the type produced in Mexico. The most likely replacement for Alaska oil in currently operating refineries is oil from Saudi Arabia. The Saudis currently export 1.4 million barrels per day to Japan. If their exports are partially displaced by Alaska oil, they could simply be re-routed to the United States.

So the export of Alaska oil will end up increasing our nation's dependence on OPEC imports. That result would be totally contrary to everything our national energy policy stands for. It contradicts our efforts to reduce our dependence by rapidly filling the Strategic Petroleum Reserve, an effort that we strongly support. It further contradicts every energy action taken by the Federal Government since the first Arab oil embargo in 1974.

Some supporters of Alaska oil exports have suggested that all of these results would be acceptable if the exports resulted in a better trade balance and better relations with Japan. The problem is that neither result would be achieved. While the export of Alaska oil would partially lower our trade deficit with Japan, it would do nothing to reduce Japan's substantial barriers to imports of American manufactured and agricultural goods. This essentially artificial reduction of the trade deficit would reduce the pressure on the Japanese to open up their markets. The United States would continue to be in the position of supplying the raw materials that other nations use to produce finished goods that are then subsidized to compete with our own products.

When all is said and done, the exporting of Alaska oil does not make sense. It does not make economic sense, since it will cost the Federal Government and the American consumer billions of dollars, and throw thousands of Americans out of work. It does not make sense for our energy security, since it will increase our foreign oil imports by up to 15 percent, with the oil likely to come from OPEC sources. It does not make military sense, since it will result in the destruction of an important sector of our military sealift capability. For these reasons, we strongly support the reauthorization of Section 7(d) of the Export Administration Act.

Maritime Institute
for Research and
Industrial Development
MIRAID
1133 Fifteenth Street, N.W.•Suite 600•Washington, DC 20005
(202) 463-6505

STATEMENT OF

JULIAN H. SINGMAN, PRESIDENT

MARITIME INSTITUTE FOR RESEARCH AND INDUSTRIAL DEVELOPMENT

ON

REAUTHORIZATION OF THE EXPORT ADMINISTRATION ACT

Mr. Chairman and Members of the Subcommittee:

The Maritime Institute for Research and Industrial Development appreciates the opportunity to present our views on the reauthorization of the Export Administration Act (PL 96-72) and more specifically on subsection 7(d) which contains restrictions on the export of Alaskan North Slope crude oil. We urge the Subcommittee to re-enact these restrictions before they expire.

The Maritime Institute is a non-profit corporation organized to promote and foster the growth and development of the United States merchant marine. Our membership includes approximately 100 companies operating United States-flag vessels in all aspects of our nation's foreign and domestic trade, including the transportation of Alaskan crude oil. Our Board of Directors includes executive officers of companies broadly representative of our waterborne international and interstate commerce, as well as the Presidents of key maritime labor unions and of the AFL-CIO itself.

The Export Administration Act is a major tool in selectively curbing those exports which would otherwise cause harm and injury to the United States. Although the value of exports to the economic well-being of the

United States is well documented, Congress, through the Export Administration Act, recognized that there are circumstances when the potential benefits of a particular export are outweighed by the possible adverse consequences. The Act provides the authority to control exports when necessary, but also ensures that the controls are utilized only to achieve the purposes of the Act.

Section 7(d) of the Export Administration Act of 1979 governs the export of crude oil transported through the Trans-Alaskan Pipeline System (TAPS). Under section 7(d) exports of Alaskan oil may be proposed by the President and approved pursuant to the Act, provided that certain findings are made. Specifically, an export cannot take place unless the President determines that the export: (1) will not diminish the total quantity or quality of oil refined, stored or legally committed to be transported or sold within the U.S.; (2) will result in lower crude acquisition costs to American refiners who in turn must pass on at least seventy-five percent of their cost savings in the wholesale and retail prices of their petroleum products; (3) will be made pursuant to a contract which may be terminated if U.S. crude oil supplies are "interrupted, threatened, or diminished"; and (4) is clearly necessary to protect the national interest.

Once the President makes these determinations he is required to submit them to Congress. If Congress, by concurrent resolution adopted within 60 days of receipt of the President's findings, agrees that the proposed export is in the national interest, the export can take place.

In addition, Alaskan crude oil may be sent to Canada or Mexico in exchange for a like amount of Canadian or Mexican oil if it is to be refined and consumed therein and the exchange results in lower oil prices for American consumers. The existing law also does not restrict the export of Alaskan oil if an export is necessary to comply with certain international oil supply agreements, such as our supply agreement with Israel or our obligations under the International Energy Program of the International Energy Agency.

Restrictions on the export of Alaskan crude oil were first placed into law in 1973 with passage of the Trans-Alaskan Pipeline Authorization Act. The intent of Congress in passing this legislation was to ensure that distribution of Alaskan oil whose production was made possible by TAPS would be available primarily for domestic use. This policy was reaffirmed by Congress in 1977 and once again in 1979 when it overwhelmingly voted to include the present export restrictions in the Export Adminstration Act.

As mentioned earlier, section 7(d) of the 1979 amendments is not a prohibition on the export of Alaskan crude oil. Exports are permitted if they are determined by the President and by the Congress to be in the best interests of the nation and of the American consumer. Section 7(d) of the Act therefore provides a reasonable and sound standard for determining which exports of Alaskan oil should be permitted to take place.

The Administration, in its recent statement on reauthorization of the Export Administration Act proposed total elimination of the current section 7(d). In its opinion, other statutes adequately control the export of ANS crude oil. Assistant Secretary of Commerce Lionel Olmer in his testimony before this Subcommittee indicated that the restrictions of section 7(d) are not appropriate. We strongly disagree.

The principal "other" statute dealing with exports of ANS crude oil is the Mineral Lands Leasing Act of 1920 as amended by the Trans-Alaska Pipeline Authorization Act. Section 28(u) of this Act will allow exports only if the export does not diminish the quantity or quality of petroleum available to the U.S. and the export is in the national interest. However, it was subsequently determined by Congress in 1977 and again in 1979 that the provisions of section 28(u) alone do not adequately protect the American public nor can they ensure that the national interest will truly be served. Congress then required, and in our opinion should again require, the additional protections, especially for the American consumer, that appear in section 7(d).

Under the provisions of the Mineral Lands Leasing Act an export of ANS crude could take place without any consideration of the cost impact to American petroleum refiners and American consumers. Lower priced Alaskan oil could be exported and replaced by higher priced oil. In contrast, existing section 7(d) would require a positive downward effect on oil prices within 3 months following the initiation of an export.

In addition, under section 28(u) there would be no assurance that U.S. oil supplies would not be adversely effected. Section 28(u) requires only that the quantity or quality of oil available to the U.S. not be diminished. Existing 7(d) however, provides that the "quantity or quality of petroleum refined within, stored within, or legally committed to be transported to and sold within the United States" shall not be diminished. This language will ensure that this nation's domestic reserves of oil such as the Strategic Petroleum Reserve or the Naval Petroleum Reserve are not considered to be sources of replacement oil for ANS crude exports. Under 28(u) ANS crude exports could take place because these strategic stockpiles of oil could be considered "available" to the U.S. whether or not an emergency exists. Section 7(d) would thus protect against the depletion of domestic strategic reserves in order to allow export of ANS oil.

Another defect of section 28(u) is that it does not contain language, as does 7(d), requiring any export to be made pursuant to contracts that can be terminated if U.S. crude oil supplies are interrupted, threatened or diminished. Without this provision there is no guarantee that export contracts could be interrupted if U.S. crude oil supplies are threatened. Without it, we could find ourselves bound by contracts to supply other countries with our oil even if our own exports of oil were interrupted.

The Maritime Institute believes that the Congressional approval requirement of section 7(d) is another essential element not contained in 28(u). By requiring a concurrent resolution of approval, maximum and final control over the disposition of ANS crude oil is vested in Congress. To protect the public interest adequately it is essential that both Houses of Congress act affirmatively on behalf of their constituents. The burden of proof should fall on those who advocate the export of Alaskan oil. The approval requirement will guarantee that all interests affected by oil exports will be heard. The variety of issues concerning consumers, energy policy, national security, international trade and transportation would be fully aired and the national interests weighed and determined by the Congress.

In light of the extensive ramifications that easing or eliminating restrictions on exporting Alaskan oil could have it is crucial that we retain the statutory provisions that will guarantee that a thorough study and review is conducted on any export proposal. The benefits of any export transaction must clearly outweigh the detriments.

The procedure set forth in section 7(d) assures that a sound decision will be made with regard to the export of a vital national resource. As a national resource, Alaskan oil should be put to its most efficient and effective use for the benefit of the entire nation. We believe that the requirements of section 7(d) foster this objective.

Although the purpose of this statement is not to advocate or oppose exports I would be remiss if I did not point out to the Subcommittee the potentially devastating impact of exporting Alaskan oil on the U.S. maritime industry. If ANS oil is exported almost one-third of the U.S.-flag domestic tanker fleet would be out of work. Estimates are that as many as 50 tankers would be immediately laid-up. Over 2,000 seafaring jobs would be lost along with several thousand shipyard and support jobs. In addition, the Federal government would have to pick up the tab on hundreds of millions of dollars of Federally insured loan guarantees on those laid up tankers.

The disposition of Alaskan crude oil is of great importance to all Americans: the existing language of section 7(d) reflects this importance. Section 7(d) of the Export Administration Act should be extended as presently written.

STATEMENT OF HAROLD P. BERNSTEIN, CHAIRMAN
NORTHVILLE INDUSTRIES CORP.

Northville Industries Corp. of Melville, New York is one of three owners of Petroterminal de Panama ("PTP"), the Panamanian company that owns the oil pipeline across the Isthmus of Panama. In this capacity, it has been intimately concerned with the Alaskan oil export issue since the founding of PTP in 1976-77. We would like to take this opportunity to inform the Congress about the investment we and our partners have made in the pipeline and associated terminals, the strategic and economic benefits which that pipeline provides to the United States, and the policy considerations involved more generally in the Alaskan oil export issue. In brief, our conclusion is that the national interest would best be served by a continuation of the current restrictions on the export of Alaskan oil. Any softening of those restrictions would (1) jeopardize substantial investments made not only by Northville but also by the U.S. maritime industry, the U.S. oil industry and the U.S. banking industry in reliance upon the government's long-standing policy in this area, (2) undermine profoundly this nation's energy security, and (3) have a negative impact on American consumers and American foreign policy.

In the subparagraphs that follow, we first discuss the pipeline and its history and then review a number of critical points that bear on the Alaskan oil export issue.

The Pipeline. PTP, the owner of the pipeline, is owned 40 percent by the government of Panama, 39 percent by Northville Terminal Corp., a wholly-owned subsidiary of Northville Industries Corp., and 21 percent by CBI Industries, another U.S. corporation. Northville Terminal Corp. is the manager. The pipeline has a maximum design capacity of 880,000 barrels per day. It commenced operations in October of 1982, and its monthly operating history since then is summarized in the following table:

Average Daily Volume
(Barrels)

October -- 350,000
November -- 570,000
December -- 630,000
January -- 600,000
February -- 640,000
March -- 720,000

The bulk of this oil is being transported pursuant to term contracts between PTP and Sohio, Exxon, Arco and Mobil. PTP's approximate gross revenue for pipeline shipment is $0.95 a barrel, thus reserving for the producers, shippers or consumers of the oil half the savings achieved by avoiding the longer, slower Canal route. Once outstanding indebtedness has been paid off (which is expected to occur within three years), the Government of Panama will receive in excess of $100 million a year from its ownership interest, taxes and royalties.

The actual cost of the pipeline and related facilities is still a subject of some dispute. The approximate figure, including interest, is $400 million.

The project was undertaken, and financed, in reliance upon the United States Government's long-standing decision to restrict the export of Alaskan oil. (Indeed, the export of any U.S. crude oil, this country's most precious strategic resource, has been restricted since well before the construction of the Alaska Pipeline.) First articulated ten years ago in the TransAlaska Pipeline Act, that decision to restrict Alaska oil exports in particular has time and again been strengthened and reaffirmed. In 1976, the Ford Administration ruled out the export of Alaskan oil. In 1977, Congress tightened the restrictions on exports, and two years later Congress further stiffened those restrictions. Finally, in 1981, the Reagan Administration decided not to advocate the export of Alaskan oil.

Each time United States policy in this area was reaffirmed, the government assured American industry and consumers that it was committed to reserving oil from the North Slope of Alaska for domestic use. By relying upon those assurances, Northville and its partners were able to develop a safe, speedy, economical way of meeting an important transportation need. If the government now abruptly changes directions and permits the export of Alaskan oil, it will bankrupt this venture as well as the similar ventures of others who have invested in transportation, storage and refinery infrastructure in reliance upon the solemn pronouncements of prior Congresses and Administrations. This would be grossly unfair to the companies whose investments would be lost. Moreover, it could be more broadly counterproductive as well by suggesting to many businesses that they should be hesitant to act upon seemingly consistent policy guarantees, and that they should ignore business opportunities and shun investment projects in the Caribbean Basin out of a fear that today's firm government policy will be tomorrow's lesson in history. The U.S. Government owes its citizens a greater degree of consistency.

Lost Infrastructure. A reversal of present policy would not only put enormous economic pressure on businesses that have invested in facilities to expedite the transportation of Alaskan oil, but also lead to the disuse and ultimate dismantling of the actual facilities themselves. The result would be to permit the atrophy of an infrastructure capable of transporting a precious resource to locations where it is needed in this country. As that infrastructure crumbled, so would one key element of our national security; for, if there came a time when it was necessary to use Alaskan oil for domestic purposes, we would no longer possess the tankers and terminal facilities necessary to move that oil and the pipeline that makes its transportation across Panama economical and clauses would have significant practical and diplomatic costs, and those costs would be greatest precisely when our need for our own resources was most urgent. Moreover, as noted above, even were we able successfully to run the diplomatic gauntlet of termination, the transportation infrastructure necessary to resume efficient and safe utilization of Alaskan oil in this country would no longer exist.

Finally, replacing Alaskan oil with foreign oil of the same quality is likely to involve increased costs and a lessening of the downward pressure on imported oil prices now created by the assured availability of Alaskan oil. The lower cost of crude oil in America today, with its consequential benefits for our rate of inflation, is clearly related to this country's increasing energy self-sufficiency.

In short, those who favor the export of Alaskan oil are asking you not to make a short-term contribution to the functioning of the world market, but to forsake irretrievably an important U.S. bulwark against the obvious imperfections in that market.

Maritime Considerations. You have already heard from the maritime industry of the impact the export of Alaskan oil would have upon the Jones Act tanker fleet. This is not the place to reiterate those arguments. We would simply like to emphasize that a significant portion of the transportation cost savings that would flow from the export of Alaskan oil would come not from an inherently more efficient distribution network, but rather from a shift in business from the Jones Act fleet to foreign tankers. Such a shift would undermine Congress' long-standing decision, embodied in the Jones Act, to ensure that this nation maintains a robust maritime industry capable of meeting our military and nonmilitary needs. Accordingly, while proponents of the export of Alaskan oil tend to pose the issue in efficient. In short, permitting the export of Alaskan oil would diminish irrevocably this nation's ability to rely upon its own energy resources.

Dependence on Foreign Oil. At the core of the current restrictions on the export of Alaskan oil lies a profound concern for America's energy security. It is no answer to that concern to argue that we are participants in a world oil market and to point out that the theoretical niceties of the laws of supply and demand should determine our access to vital oil resources in the years to come. In oil, those supposed laws have failed all too often. Particularly in times of short supply, destination restrictions are placed on tankers for reasons wholly inconsistent with a free oil market. The whole energy security problem flows from the fact that the world oil market, though well supplied at present, is inherently unstable and can at any time be plunged into chaos by political unrest in the Middle East. You cannot, in consequence, determine the best use of Alaskan oil by assuming a perpetually perfect world market. Rather, the debate must focus on the market's imperfections, its fragility, and the resulting threat that this country faces.

If significant quantities of Alaskan North Slope oil are exported, America's dependence on other sources of supply -- particularly the Persian Gulf -- will be increased. This can have only one result: It will make this nation, its economy and its Mideast foreign policy more vulnerable to supply disruptions, whether caused by logistical foul-ups, political instability, or direct political pressure directed against us and our allies. Arguments based upon economic theory cannot respond to these concerns for the simple reason that they are not economic but geopolitical. Nor is it an answer to say that this country can retain the security provided by our Alaskan North Slope resources by making export contracts readily terminable. Exercising such termination terms of global transportation efficiencies, what they are really doing is asking you to reconsider existing maritime policy. Not surprisingly, they have not been able to come up with persuasive reasons for doing so.

Incentives for Production. Several who testified before your committee urged that the export of Alaskan oil would be desirable because it would create incentives for increased production in Alaska. These contentions are significantly overstated. In the first place, precisely those same proponents point out that the bulk of the transportation savings will accrue not to oil producers but to the United States Government and, to a lesser extent, the Alaskan Government in the form of increased taxes. In fact, the actual increased revenue to producers would be quite small, and there is no reason to suppose that such modest increases would provide a significant incentive for additional production. On the contrary, if increased production was not taking place a few years ago, when the price of oil was considerably higher, the export of Alaskan oil is unlikely to cause it to take place now.

Moreover, the major impact of increased production in Alaska should be to increase this nation's energy independence -- to shore up the bulwark against market imperfections and international pressure described above. If increased Alaskan production is obtained only by exporting that oil, then it will not have this effect at all. In times of abundant supply, that increased production will simply increase global abundance; but in times of short supply exporting that increase will be a clear detriment to this country. To increase our production merely to export it will surely be viewed by the U.S. public as logically inconsistent with any further public support for filling the Strategic Petroleum Reserve, for developing our coal and alternative energy resources, for a military capacity to protect Persian Gulf oil and for promoting voluntary energy conservation.

Foreign Policy Implications. Proponents of a relaxation of the current restrictions on export have argued that such a relaxation would provide the United States with certain advantages in its negotiations with Japan over a variety of international trade and foreign policy issues. We find this position puzzling and in certain respects internally inconsistent. First, Japan's interest in Alaskan oil is presumably precisely the same as the interest of any developed country in a given oil resource -- namely, the desire for a safe, secure and politically shockproof source of supply. Japan wants, in other words, exactly what proponents of the export of Alaskan oil assert there is no reason for the United States to want. This simply does not make sense. Either such proponents are correct in their assertion that the export of Alaskan oil would not deprive the United States of any significant amount of energy security -- in which case it is far from clear why the Japanese should be particularly interested in securing Alaskan oil for themselves; or such proponents are, as we submit, incorrect -- in which case, while the Japanese may have a strong desire for Alaskan oil, that desire cannot be met by the United States without significant costs to us. It is difficult to argue that Alaskan oil is a potentially important bargaining chip in negotiations with Japan while at the same time maintaining that it is of trivial importance to the United States.

Second, because the export of a significant amount of Alaskan oil to Japan would have the effect of bringing our overall balance of trade figures with Japan into something closer to balance, that mathematical change could in fact make it more difficult for us to object to the imbalance in manufactured and agricultural products which is at the core of our trade problems with Japan. We certainly agree that tough negotiations with Japan are necessary in order to open up Japanese markets to American manufacturing and technology. We do not, however, see why exporting our crude oil to Japan would advance this goal.

Third, the foreign policy arguments in favor of export systematically ignore the impact on the government of Panama of a significant relaxation of export restrictions. Panama is an important ally in an unstable region. The canal is a resource vital to our security. If Alaskan oil is no longer shipped across the Isthmus of Panama, the Panamanian Government will lose projected revenues in excess of $100 million a year. This could have a diplomatically and economically destabilizing effect, as that Government has recently stated. Surely the need to avoid destabilization of a peaceful and vital democracy in Central America and to preserve a secure environment for the Panama Canal outweighs today any marginal foreign policy advantages cited in favor of export.

Section 7(d) in Perspective. When Congress decided to authorize the Trans-Alaska pipeline in 1973, and in the process to turn the Alaskan North Slope oil resource into a viable commercial enterprise, its goal was not simply to increase the world's supply of oil, but rather to realize tangible and profound benefits for the American people by guaranteeing them a secure and stable source of oil -- a source insulated from the vagaries of Mid-East policies, the logistics of transporting oil throughout the world, and the diplomatic considerations that invariably impact international negotiations regarding oil.

In the years that followed, this policy was honed and refined. It is now embodied in section 7(d) of the Export Administration Act, which reflects Congress' decision that Alaskan oil should not be exported unless such exports are in the national interest, will not diminish the total quantity or quality of crude available to the United States, will result in lower acquisition costs to refiners, will result in at least 75 percent of the cost savings being passed on to consumers, and will be made pursuant to contracts which may be terminated if United States crude supplies are interrupted, threatened or diminished.

Section 7(d), in short, contains a carefully thought out, long-standing and entirely rational set of criteria for determining when it is in the national interest to export Alaskan oil.

The Congress is now being asked to set aside those criteria and abandon the policy which underlies them. What this means is that you are being asked to authorize the export of Alaskan oil in situations when it will not be in the public interest as now defined by Congress. This is a point which tends to be obscured in debate over this issue. Proponents of the export of Alaskan oil tend to cloak their entreaties in a somewhat beguiling garb by arguing that the export of Alaskan oil will promote the public interest. What they are really saying, however, is that Congress's public interest standard -- the one you have enacted into law -- cannot be satisfied on the present state of the facts but that they want to export Alaskan oil anyway. You are being asked, in short, not to lift a "ban," but rather to define the public interest differently, to abandon the criteria which you have enacted and which the American people have accepted for many years.

This, we submit, would be a mistake.

ADAPSO

THE
ASSOCIATION
OF DATA
PROCESSING
SERVICE
ORGANIZATIONS

STATEMENT OF
THE ASSOCIATION OF DATA PROCESSING SERVICE ORGANIZATIONS
ON
AMENDMENTS TO THE EXPORT ADMINISTRATION ACT OF 1979

ADAPSO is the trade association of this nation's computer services industry. Its 600 members provide software packages and custom programming for all types of computers, timesharing and other remote processing services, batch processing services, and integrated computer hardware and software systems.

Annual revenues for the computer services industry surpassed $25 billion in 1981, and will reach $50 billion by 1986. In 1981, $2.9 billion or 12% of revenues came from international transactions. These exports translate into jobs in the U. S., and an improvement in the U. S. balance of payments.

Unlike many other types of high technology offerings, computer services are provided with very little lead time and after very little negotiation. Customers expect - and will receive from any number of sources - immediate service upon demand. Thus, each increase in the severity of the unilateral controls on U. S. computer services exports, and the attending delays, will drive a proportionate number of customers to foreign suppliers without measurably improving U. S. national security.

ADAPSO strongly supports the goal of protecting U. S. national security. This goal can and should be achieved without harming the ability of U. S. firms to engage in business transactions with our allies. Further, U. S. firms ought not be restrained in markets where their foreign competitors are permitted to sell without restriction.

This paper discusses a number of changes that should be made to the Export Administration Act of 1979 (EAA) and the way the Act is administered. It bears emphasizing, however, that the current export administration system is basically sound and does not require major revision.

Protection of U. S. national security requires that exports of certain goods and technologies be closely controlled. A validated license should not be required unless (1) the item to be exported would make a direct and significant contribution to the military capability of an adversary of the United States, and (2) the consignee is located in a country which is a potential adversary of the U. S., or which is unable or unwilling to control reexport of the item to a potential adversary. Other items of lesser military significance may, if necessary, be subject to the requirements for a general license. The following paragraphs amplify these points:

> Scope of Controls. The list of items subject to validated license requirements should be purged of items that would make no significant contribution to an adversary's military capabilities. The existing overbroad list has had an unfortunate impact on U. S. balance of payments and has

spread enforcement resources too thin, with no corresponding benefit to U. S. national security. The militarily critical technologies list developed by the Department of Defense has not been released to the public, but is apparently so broad that it would substantially compound current problems. The trend toward controlling items without regard to their lack of military usefulness, and without regard to the effect on the competitiveness of U. S. companies in international markets, should be reversed.

Foreign Availability. The U. S. should not control exports of items available on an unrestricted basis in significant quantity and comparable quality from foreign sources. There should be recognition that many high technology items are in abundant supply from foreign sources. Section 4(c) of the EAA embodies Congressional recognition of the futility of unilateral export controls on those items, but the Departments of Commerce and Defense have never fully implemented that section.

Where militarily significant goods or technologies are available to controlled destinations from foreign sources, the U. S. government should initiate negotiations with the appropriate foreign government or governments to eliminate that availability. While those negotiations proceed, U. S. firms should continue to compete for this business. Any other course of action merely increases the profits earned by foreign companies, making it more difficult for foreign governments to justify cutting off that trade. U. S. competition may, in some instances, be America's strongest weapon in the negotiations.

To assist in both negotiations and licensing decisions, the Department of Commerce must improve its ability to assess foreign availability. The Commerce Department has to date refused to accept overwhelming evidence of foreign availability without verification, but does not have the resources to verify applicants' claims. Proposals that would shift the burden of proof on foreign availability to the Department of Commerce should be adopted. Unless Commerce has convincing evidence to the contrary, it should accept an applicant's certification that an item is available from foreign sources.

CoCom. Countries belonging to the Coordinating Committee (CoCom) are reliable allies that can be trusted to abide by their international obligations. To the greatest extent possible, the United States should rely on CoCom arrangements rather than burdensome licensing procedures to prevent militarily significant items from reaching potential adversaries. Where necessary, the CoCom arrangements should be strengthened through negotiation. The lack of controls on U. S. exports to Canada provides a model or a goal for these negotiations.

The following actions would contribute toward this goal:

(1) Remove validated license requirements for exports (to CoCom and all other destinations) of items that are not militarily significant, or that are available from foreign sources. As discussed above, controls on these items harm U. S. economic security without improving its military security.

(2) Initiate negotiations to strengthen the export control arrangements with CoCom and raise them to treaty status. The existing informal arrangement has served relatively well, but would benefit from the formality that treaty status would afford.

(3) Once the strengthened arrangements are in place, remove individual validated license requirements for exports to CoCom countries, regardless of foreign availability. Once again, these countries are allies of the United States, and they abide by CoCom export controls for the same purposes as the United States. CoCom countries have every incentive to enforce the nonreexport certifications their domestic companies have given U. S. exporters.

(4) No controls at all should be placed on items specifically covered by CoCom multilateral controls. CoCom countries can and should be trusted to abide by their international obligations.

(5) To the extent militarily significant technology can currently be acquired from CoCom countries by adversaries of the U. S., CoCom controls should be negotiated or strengthened. This course represents a much less harmful resolution to the problem than reliance on burdensome export licensing procedures which inhibit the competitiveness of U. S. exporters.

Pro-Western Countries. The U. S. government should attempt to negotiate bilateral export control agreements with stable pro-Western non-CoCom countries as similar as possible to CoCom agreements. Such negotiations would recognize that CoCom does not include all countries friendly to the interests of the United States. Where negotiations with a particular country are successful, no validated licenses should be required for exports to that country.

ADAPSO opposes as unncessary proposals to establish an Office of Strategic Trade, as well as proposals to transfer primary export administration responsibility to the Department of Defense. The problems said to justify these proposals - that export administration responsibilities are too widely diffused and that Department of Commerce employees have insufficient training and resources to carry out their responsibilities - would be better remedied by giving the necessary authority and devoting the necessary resources to the Department of Commerce. In addition to creating unacceptable uncertainty among exporters and their foreign customers, shifting responsibility away from the Department of Commerce would in the near term weaken U. S. national security because the new office would require substantial start-up time to become effective.

With respect to imposition of controls, the public should be given an opportunity to comment before additional export controls are imposed. Export controls can have a dramatic effect on the interests of U. S. companies. Technical Advisory Committees provide some information, but cannot represent the full spectrum of interested parties. The Departments of Commerce and Defense should be required to publish a notice of proposed rulemaking in the Federal Register before imposing new requirements, and to accept public comment in response to the notice as are other agencies promulgating new regulations.

In summary, ADAPSO supports the goal of improving U. S. national security. To the extent this goal is achieved by negotiating agreements with other non-Communist countries rather than by relying on burdensome export controls, the U. S. balance of payments will improve and jobs will be created at home.

Please let us know if we can meet with you or your staff to discuss these matters further.

Sincerely,

David A. Wormser
Assistant General Counsel

DAW/epb

Enclosure

cc: Committee on Banking, Housing,
and Urban Affairs

NATIONAL FOREIGN TRADE COUNCIL, INC.

100 EAST 42ND STREET, NEW YORK, N.Y. 10017 (212) 867-5630

STATEMENT
BY THE NATIONAL FOREIGN TRADE COUNCIL
FOR THE RECORD OF HEARINGS
BEFORE THE
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS OF THE UNITED STATES SENATE
ON THE AMENDMENTS TO THE EXPORT ADMINISTRATION ACT OF 1979
MARCH 2, MARCH 16 AND APRIL 14, 1983.

Mr. Chairman:

The National Foreign Trade Council is an association of over 600 companies engaged in international trade and investment. Our membership represents more than half of U.S. exports of manufactured goods and services. I am pleased to present the recommendations of the Council on amendment of the Export Administration Act of 1979, with particular emphasis on the foreign policy controls provisions of the Act.

In this connection reference will be made both to S. 397, "Export Administration Act Amendments of 1983" and to the Administration's proposal "To Amend and Reauthorize the Export Administration Act of 1979."

While the Export Administration Act recites that exports strengthen the U.S. economy, the Act is essentially a mechanism for restricting exports, for the purpose, among others, of furthering the foreign policy objectives of the United States.

Exports are even more important to our economy now than they were when the Act was passed in 1979; about one out of five jobs in manufacturing industries are export-related, and approximately one out of every three acres of U.S. farmland produces for export. Services are also a significant and growing factor in the nation's export trade.

The present state of the United States economy is not healthy, due in part to a decline in U.S. exports as a percentage of the world's exports. The Commerce Department has just estimated a record $42.7 billion U.S. trade deficit for 1982 (on a C.I.F. basis) and predicted an increase to $60 billion or more in 1983.

Although many factors have contributed to that decline, it is fair to say that export controls instituted for foreign policy purposes have had an increasingly adverse effect on the volume of U.S. exports, with concomitant detrimental effects on jobs and trade balances.

WASHINGTON OFFICE: 900 17TH STREET, N.W. • WASHINGTON, DC 20006 • (202) 887-0278

The adverse effects of export controls and embargos begin with lost sales and cancelled contracts amounting to millions, and in some cases billions of dollars. And the termination of particular sales transactions is only the most visible cost to our economy.

Many contracts between American companies and foreign buyers contain long-term arrangements for the supply of spare parts, maintenance services and transfers of technology. Repeat orders are another source of future revenues. All these potential exports are also lost when sanctions are imposed.

In addition, export controls operate to curtail the many services connected with prohibited transactions--insurance, bank, credit, transportation, communications, among others.

Still another cost of export controls has been that the United States is increasingly viewed as an unreliable supplier. Foreign customers are increasingly concerned that the U.S. Government will bar performance of contracts by U.S. suppliers. Entire markets may thereby be permanently eroded, with grave consequences for overall export performance and domestic employment. The pipeline sanctions in particular have created doubts abroad on the reliability of supplies from U.S. sources.

The burden on our economy stands in sharp contrast to the results achieved. In our view, few sanctions have succeeded in bringing about a discernible change in the behavior of the country against which they were imposed. The benefits of such sanctions to the United States are especially dubious when they are imposed merely to signal moral opprobrium. Indeed, even the asserted foreign policy gains have been counterbalanced by foreign policy losses--sanctions have generated severe and well-publicized tensions in our foreign relations. In summary, we now recognize that foreign policy controls have very significant long-range adverse effects on the U.S. economy and our relations with our allies, which are not proportionate to benefits. There is an urgent need to revise the Act to promote a better balance between foreign policy concerns on the one hand and the necessity to maintain a strong economy on the other.

We recommend:

1) A strengthened system of consultation with private enterprise, Congress and allied nations.

2) Foreign availability should be given significantly greater weight in decisions on application of export controls.

3) The economic impact of proposed sanctions should be thoroughly evaluated before decisions on controls are made. Economic impact analysis of past sanctions should also be mandated.

4) The extraterritorial reach of the Act should be limited.

5) The principle of sanctity of contracts in international transactions should be honored.

Each of these recommendations is discussed below.

(1) CONSULTATION

We welcome the proposal included in S. 397 in the section on "Advisory Committees" that "In carrying out the provisions of this Act, the Secretary shall consult on a continuing basis with the advisory committees established under section 135 of the Trade Act of 1974."

Our own recommendation is that the Act should strengthen procedures to assure increased breadth and depth of consultation--with the Congress, with business, with the public and with our allies, before decisions are reached to impose economic sanctions.

First, we propose the creation of a strengthened government-industry consultative mechanism. Although the Act already calls for consultations with industry, to the best of our knowledge our government has not adequately fulfilled this congressional mandate. Consultation has frequently been hasty and perfunctory. Inadequate time has been given for industry to provide foreign availability and economic impact data.

We recommend the creation of an industry advisory committee in the ISAC framework to consult with government on the use of trade sanctions.

The advisory committee should be made up of senior representatives of the international business community. The Act should provide that the committee must be consulted prior to the proposed imposition of controls, and at least quarterly on policy formulation. A primary function of the committee would be to help our government assess the economic impact of proposed controls.

Second, prior to the actual imposition of controls, the President should be required to publish a notice of his intention to impose such controls in the Federal Register and solicit public comment, and the Commerce Department should be required to hold public hearings on the proposed controls.

Third, the President should be required to submit to Congress a report setting forth specific findings with respect to each of the criteria contained in Section 6(b) of the Act (i.e., consultation with business, consultation with foreign governments, foreign availability and cost-benefit analysis), and demonstrating that each of these criteria has been met. In this connection we concur in the amendments proposed in S. 397 to strengthen the criteria regarding foreign policy controls to require that the criteria of section 6(b) be met, not merely "considered." Should such a report not be submitted within 45 days from the date of imposition of the controls, the controls should automatically expire.

And fourth, all existing export controls imposed for foreign policy purposes should also automatically expire in six months, and all controls imposed after the renewal by this Congress of the Export Administration Act becomes effective should likewise expire in six months.

(2) FOREIGN AVAILABILITY

Most economic sanctions fail because they do not in reality deny the target country goods or technology available elsewhere in a highly competitive international trading economy. The Act states that when imposing controls, the President should consider foreign availability. In our opinion, the Commerce Department does not have in its files sufficient data on which to make informed judgments as to whether many products and technology are or are not available from other sources. Even when adequate information is available, it appears to be given little weight. It is reasonable to assume that had the United States Government possessed all the relevant foreign availability information and assessed it realistically, many sanctions would never have been imposed.

If Congress mandates the consultative process which we have recommended, and the issuance by the President of a report on how the statutory criterion of foreign availability has been met, more information on foreign availability will result, and more importance will be attached to such information.

Foreign availability should be used as an absolute, not weighted criterion so that controls may only be imposed when there is no foreign availability.

(3) ECONOMIC IMPACT STUDIES

The nation is not fully informed as to the domestic economic impact of foreign policy sanctions. We recommend that the Secretary of Commerce be required to produce in six months a sector-by-sector review of the domestic costs of the Afghanistan, Polish and other foreign policy embargoes imposed in the last five years. The Secretary should also be required to issue reports on the domestic economic effects of new export controls instituted for foreign policy purposes and that such reports be published in the Federal Register every six months after the announcement of such controls.

In assessing the domestic economic impact of past and proposed sanctions, services must be included.

(4) EXTRATERRITORIALITY

The Act authorizes the President to prohibit or curtail the export of any goods or technology "subject to the jurisdiction of the United States." The United States has taken a broad view of its jurisdiction under the Act, and the result has frequently been viewed by our allies as interfering with their sovereignty and foreign policies. When the United States seeks to replace cooperation among nations with the much less effective assertion of extraterritorial jurisdiction over foreign business conduct, controversy is inevitable.

The most recent controversy occurred in June, 1982, when the Commerce Department issued regulations under the Act prohibiting the sale of certain oil and gas-related equipment to the Soviet Union by foreign firms owned or controlled by U.S. companies regardless of any connection with U.S.-origin products or technology. The order also applied to licensees of U.S. technology although some of these licensees were neither owned nor controlled by U.S. firms.

Our allies regarded this action as an unprecedented and unjustified extension of extraterritorial jurisdiction by the United States. The European Communities characterized the regulations as "an unacceptable interference in the affairs of the European Communities" and a violation of international law. Several governments invoked measures to compel U.S. foreign subsidiaries to honor existing agreements. The District Court of the Hague held that, under international law, the United States could not regulate such contracts. Thus the attempted extension of United States laws through the exercise of extraterritorial jurisdiction is often self-defeating. In the case of the pipeline sanctions, for example, instead of influencing the Soviet Union with respect to its action in Poland, the controls divided the United States from its allies.

As a matter of international law, where the conduct of a foreign entity takes place entirely in a foreign country and is consistent with the law and policy of that country, the unilateral exercise of extraterritorial jurisdiction by the United States to prohibit directly such conduct for foreign policy reasons raises serious questions. The mere fact of U.S. ownership of such foreign-organized companies is not sufficient to permit the direct exercise by the United States of jurisdiction over the foreign conduct.

Even when the exercise of foreign policy controls by the United States does not involve extraterritorial jurisdiction--for example, a Commerce Department denial order prohibiting a U.S. company from shipping particular products to its foreign subsidiary, international law and principles of comity require that consideration should be given to the law and policy of the state of nationality or incorporation of such foreign subsidiary.

Accordingly, we recommend that the foreign policy controls provisions of the Act be amended to provide:

(1) That no order shall be directly imposed on companies incorporated under the laws of a foreign country, nor to foreign licensees of U.S. technology;

(2) When applying sanctions which have an effect on persons or companies located outside the United States (such as an order prohibiting a U.S. company from transmitting technology to a foreign subsidiary), consideration must be given to the law and policy of the foreign state involved; and when a conflict of law or policy appears between our government and such foreign state, the United States should consult with the foreign government affected prior to the imposition of sanctions. The consultation should give due weight to the interests of the foreign state.

5) SANCTITY OF CONTRACTS

Section 15 of S. 397, "Export Administration Act Amendment of 1983", provides for sanctity of existing contracts already in force at the time of the imposition of foreign policy controls. The Administration's bill would only protect existing sales contracts, the terms of which require a delivery within 270 days from the imposition of controls. We agree with the recommendations of the Export Administration Subcommittee of the President's Export Council that: "The sanctity of contracts is the main criterion whereby customers judge the reliability of suppliers. Disrupting a valid contract places enormous economic penalties on the affected firm." Contracts for the export of capital goods and turnkey projects often run for years. The 270 day limitation proposed by the Administration is inadequate; a provision should be added to the Act which would exempt existing contracts from foreign policy controls.

The Administration's bill proposes also that the President may prohibit performance of existing export contracts even within the 270 day period if allowing such exports would prove detrimental to the overriding national interest of the U.S. This provision makes the President's discretionary power even stronger than under the law Congress enacted last year: U.S. agricultural exporters are assured sanctity of contract for 270 days, except in case of war or "national emergency."

It is our recommendation that the principle of "sanctity of contracts" in international transactions should be preserved without limitations except in times of declared national emergencies and war.

S. 397 proposes to amend the EAA of 1979 by inserting in Sec. 6, Subsection 6(a): "Whenever the authority conferred by this Section is exercised with respect to a country, the President shall prohibit all imports from that country to the United States, subject to such exemptions for specified goods and technology as the President may prescribe."

This proposed amendment would extend still further the scope of foreign policy controls, prohibiting additional transactions not presently covered by the Act, and would create additional uncertainties for U.S. importers. A prohibition of imports may also be in conflict with existing rules of the General Agreement on Trade and Tariffs.

Control of imports is also proposed by the Administration, which seeks to expand the President's authority to penalize companies violating U.S. export controls by restricting the importation of their goods and technology into the U.S. We oppose this proposal because it further extends the extraterritorial reach of the Act.

Moreover a time when the Administration is trying to win the cooperation of our allies in establishing policies on joint economic sanctions, this provision if enacted would have profound disruptive effects. Our allies have stated already that this extraterritorial jurisdiction is in conflict with international law. The E.C. has asked the U.S. to reconsider this provision. The British Trade Minister referred to this proposal as the "worst feature" of the proposed legislation. We are also opposed to this amendment on the ground that the President already has broad punitive powers to enforce sanctions.

Finally, we recommend that all enforcement orders issued by the Commerce Department for violations of foreign policy controls, including temporary denials of export privileges, be immediately reviewable by a Federal District Court so that the Commerce Department cannot impose sanctions without the persons affected being given an opportunity to seek a Court decision on issues such as whether the sanctions exceed the President's authority under the Act, or violate international law.

In conclusion, we believe that changes in the Export Administration Act which produce an improved system of consultation, more exhaustive studies of economic impact, and greater emphasis on sanctity of contract and respect for the principles of international law and the foreign policy objectives of our allies, will lead to a wiser and more restrained use of foreign policy controls.

It is requested that this statement be included in the record of the hearings held by the Committee.

Richard W. Roberts
President

RWR/lj

Aerospace Industries Association of America, Inc.

STATEMENT OF
AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA, INC.
CONCERNING THE REAUTHORIZATION OF THE EXPORT ADMINISTRATION ACT
SUBMITTED TO
SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
UNITED STATES SENATE

April 26, 1983

The Aerospace Industries Association of America, Inc. (AIA), the trade association representing the nation's major manufacturers of commercial, military, and business aircraft, spacecraft, aircraft engines, helicopters and related components and equipment, appreciates the opportunity to express its views on the reauthorization of the Export Administration Act.

In the last decade, U. S. sales of aerospace products have increased dramatically. From slightly under $4 billion in 1973, the industry's contribution to the U. S. balance of trade climbed steadily to over $13 billion in 1981. Figures for last year show a positive aerospace balance of $11.2 billion. Total aerospace exports in 1982 totaled $15.6 billion, down 11.5 percent from the previous year. These statistics reflect competitive challenges from abroad and the state of the world economy.

The ability of this industry to continue to employ large numbers of U. S. workers and contribute a large surplus to the U. S. balance of trade will depend on the size of future markets, primarily in the civilian sector, and on the ability of U. S. aerospace manufacturers to maintain their share of the international market in the face of stiffening foreign competition. Despite the current worldwide recession, we remain optimistic about the future of our industry. Over the next ten years, a civil transport export market of $75 billion is anticipated. Sales of corporate/business jets, commuter aircraft and helicopters also are expected to increase substantially over the same period. To meet the growing challenges to the U. S. share of the international market, we need to insure that export controls and other trade inhibitors will not shackle the American aerospace industry in fair competition with foreign manufacturers. The stakes are high -- not only for the aerospace industry but for the national economy as well.

As the attached study by Chase Econometrics/Interactive Data Corporation demonstrates, aircraft sales make a substantial contribution to economic growth, create jobs and produce tax revenues for federal, state and local governments. Export sales provide an expanded business base, resulting in greater economic, employment and tax revenue benefits. By generating these additional revenues and profits, export sales enable industry to invest in more sophisticated research and production facilities. Also, the economies of scale and extended production runs resulting from significant overseas sales lead to reduced unit costs and the ability to pass the resultant savings on to U. S. customers.

Reauthorization of the Export Administration Act should have as its objective the striking of a balance: Between the need to use export controls for reasons relating to national security, foreign policy or short supply considerations, on the one hand, and the need to promote exports in order to reduce the foreign trade deficit, increase U. S. productivity and create additional jobs, on the other hand. Unfortunately, the trend in recent years has been toward the increased use of controls, without the appropriate balance of export development efforts. We have no quarrel with the findings and purpose section of the 1979 Export Administration Act. We wholeheartedly endorse these objectives. We are concerned, however, about the interpretation and implementation of the Act, and believe that a number of changes should be made during the reauthorization process.

Many AIA member companies are defense contractors, developing and building high technology products for the armed services. We are highly conscious of the need for the U. S. and its allies to maintain a technological lead over potential adversaries. Sustaining this effort requires expanding research and development activities, both within the government and through independent research and development by private industry. Existing technology that would make a truly significant contribution to the military capabilities of potential adversaries must also be protected. In this regard, the Militarily Critical Technologies List (MCTL) was originally mandated by Congress to:

- o Insure that certain industrial know-how, derived for commercial purposes but critical to the national security, not fall into the hands of an adversary nation;
- o Shift the emphasis in export controls away from products and toward the control of know-how and related manufacturing equipment.

There is no question about our support for efforts to keep the most sensitive militarily-critical technologies out of the hands of unfriendly countries. The aerospace industry willingly has made substantial contributions of time, talent and money to help the federal government develop and review lists of military-critical technologies. In so doing, however, we emphasized that care must be taken not to embargo goods or technology available to our adversaries through other sources; without regard for this consideration, the imposition of controls for national security purposes could entail damage to U. S. economic interests. The aerospace industry also stressed that any list of militarily-critical items should reflect only truly critical items; that the control list should be kept to a minimum, determined to a great extent by the foreign availability of technology and goods; and that the application of restraints must be multilateral, since unilateral controls would leave the market wide open to U. S. competitors.

The current version of the MCTL includes far too many technologies, many of which contain end-products or elements of know-how which are not truly military critical. It needs to be drastically streamlined and reduced. Moreover, the foreign availability study called for in Section 6 of the Act has never been completed and, in fact, has received only cursory attention. We think this undertaking is critical to a balanced application of export controls, based on the MCTL.

The Coordinating Committee (COCOM) -- all NATO countries except Iceland and Spain, plus Japan -- has developed policies and practices for the control of goods having a strategic military value to Communist countries, and makes multilateral decisions on controls. The U. S. and its COCOM allies share a mutual dependence for goods and technologies, and collective security. We believe the transfer of many products and technologies between COCOM countries, Australia and New Zealand and other friendly or non-aligned industrialized countries formally adhering to COCOM controls, should be deregulated, consistent with the need to prevent re-export of goods and data having a strategic military value. The Department of Commerce presently requires U. S. controls on re-export of products and technologies shipped to COCOM countries. The basic purpose of COCOM is to insure that controlled goods or technologies not be exported to adversary countries, regardless of their original source. Re-export from one COCOM country to another COCOM country, or to a country which has agreed to

COCOM control guidelines for goods and data which have been deregulated, should not require export control since direct purchase from the U. S. is permitted. In addition, consideration should be given to initiating negotiations to elevate our "gentlemen's agreement" with COCOM to a binding treaty status. This would alleviate some of the re-export concerns which have surfaced.

The export of supporting data/components for licensed commodity exports has also been hampered by current export control requirements. In the case of the commercial aerospace industry, foreign buyers of American aircraft, engines, associated equipment and spares must often be provided with detailed information relating to the performance characteristics, installation, operation and maintenance of the product; such data are required to assure safety of operation, especially in crowded U. S. airspace. American aerospace manufacturers are often required to obtain specific validated licenses to export such technical data, that is, in addition to the licenses obtained for the export of the actual product. While license applications are rarely denied, the bureaucratic delays involved in obtaining assurances that the material will not be re-exported and the further delays in obtaining the actual licenses can be costly in terms of time, manpower and lost transactions.

In sum, AIA recommends the following changes to achieve deregulation of controls:

- Create a special licensing group initially for COCOM countries, plus Australia and New Zealand for most high technology exports -- requiring general licenses for the product and support data instead of validated licenses.

- Extend the general license requirement to other friendly countries which have suitable enforcement mechanisms and with whom bilateral non-re-export controls have been negotiated.
- Remove U. S. controls on re-export of products and technologies between the aforementioned countries.
- Allow future, additional exports of bona fide spare parts and technical data under the original product license, provided that such exports to the country in question are not precluded by statute, e.g., the International Emergency Economic Powers Act.

FOREIGN POLICY CONTROLS

The Agreement on Trade in Civil Aircraft, negotiated under the General Agreement on Tariffs and Trade (GATT), seeks to remove barriers to trade in civil aircraft and parts. The aerospace industry endorses this trade liberalizing concept, but we believe that the interpretation and implementation of Section 6 of the 1979 Export Administration Act (Foreign Policy Export Controls) has left doubt and uncertainty both here and abroad regarding U. S. export practices.

Aerospace products have a very long, useful life and require the manufacturer's support over an extended period of time. A guaranteed flow of the spare parts, support equipment and technical advice is necessary to keep the product operating safely and efficiently. Without this support, aircraft would be grounded, resulting in lost revenues and foreign exchange and disruptions in passenger and cargo traffic. The industry's reputation as a reliable supplier is extremely critical to maintaining our competitiveness in the world market for aircraft and helicopters. Rather than "furthering significantly the foreign policy of the United States," the application of foreign policy controls has alienated our close friends and allies, and failed to change the policies of offending countries. There are concerns among potential customers that the product offered for sale may not be delivered due to U. S. export controls. There is also the fear that the U. S. manufacturer may be prohibited from supporting that product in the future, if the country of destination becomes the object of U. S. government disfavor.

As is the case with many other U. S. industries, a characteristic of the American aerospace industry is the availability of foreign substitutes for our products. Banning the sale of aircraft is counterproductive to the achievement of foreign policy objectives, as foreign availability is a fact of life. Our foreign competitors, although subject to certain governmental controls, are not restrained to the same degree as U. S. exporters. Our foreign subsidiaries, joint venture partners and licensees are also frustrated when restricted by U. S. government re-export controls. In cases where foreign substitutes do not already exist, U. S. foreign policy controls spur foreign manufacturers to develop capabilities to fill the void.

To ameliorate these trade problems, but retain the President's ability to react effectively in the foreign policy interests of the U. S., AIA proposes that the Export Administration Act be amended to:

- Prohibit the use of foreign policy export controls in cases where foreign substitutes not subject to U. S. controls are readily available to meet the customer's performance requirements.
- Prohibit the application of unilateral foreign policy controls to existing contracts...not just for 270 days, but for the term of the contract. This provision would acknowledge the concept of contract

sanctity without denying the President the authority to use trade restraints to further the foreign policy objectives of the U. S.

Along with these policy changes, we recommend two new types of Comprehensive Operations Licenses:

- One would permit the transfer of goods and technologies normally subject to validated license requirements between a U. S. parent company and its divisions, subsidiaries, affiliates, program partners, licensees, and joint venture partners located in COCOM countries, Australia and New Zealand, and other friendly or non-aligned industrial countries adhering to COCOM controls, where there is a specific long-term project covered by a formal agreement which has been approved;
- The other would allow a company to prelicense the export of specific non-military products (e.g., civil aircraft and spares as certified by the competent civil airworthiness agency) to users in the above-described countries. No case-by-case review would be required for the export of an aircraft or normal spares to a government or private end-user in, say, New Zealand, although a validated license would be required for the export of an aircraft to China.

ORGANIZATIONAL STRUCTURE

Problems with the current organizational structure charged with administering the Export Administration Act have led to proposals to create an independent Office of Strategic Trade (OST). While AIA believes that implementation of the current Act has not been totally satisfactory, it does not support the creation of a new agency to carry out this task. The Commerce Department should retain its primary responsibility for export licensing. The current system provides for the presentation of many views through the inter-agency review process. Legitimate business, economic, foreign policy and national security concerns are aired through inclusion of Commerce, State and DOD input. This system, while far from perfect, is preferable to the creation of a new agency with unilateral control. Further, there is no assurance that OST inter-agency review would be better than the review process now carried out under the Department of Commerce.

Transfer of current Commerce Department and State Department authority to the proposed OST is drastic and unnecessary. There are other ways to improve administration of the Act which would be far less costly and disruptive, yet achieve the same desired goals. One portion of the proposed policy for governing OST states that "determinations with respect to any export license application be made to the maximum extent solely by the Director." While this policy may speed up license processing, it undermines the opportunity for a full airing of legitimate concerns. AIA believes that delays in license processing can be corrected more effectively through steps discussed below. The ability to control exports is an extremely powerful weapon which must be used with extreme caution. Full knowledge of the impacts on national security, the economy and foreign relations is critical and can best be achieved through input from a variety of public and private sources.

Concerns regarding leaks of U. S. technology are valid, but do not warrant the establishment of a new agency. In testimony before the Senate Banking Committee on February 23, 1983, Senator Nunn said: "Our current high technology export controls now require too many items to be controlled. Because the government tries to control too many items it fails to keep track of those high technology products the Soviets desire most." By identifying those truly critical high technology products which the Soviets want most and then concentrating on these items, the volume of export license applications could be dramatically reduced, permitting intensive scrutiny of the highly sensitive cases. While we have experienced problems with the creation of the Military Critical Technologies List and the Commodity Control List as discussed previously, we still believe this approach is an effective means of addressing national security concerns.

Narrowing the range of controlled products to only those embodying truly critical high technology would:

- Permit focus of U. S. government resources on a smaller group of items, thus enabling more effective control and providing greater national security.
- Reduce U. S. business and government paperwork.
- Result in substantial savings for both industry and government.
- Improve the credibility of the U. S. government as only truly sensitive technologies would be examined.
- Speed up shipments of low technology goods, thus improving business relations and the U. S. reputation as a reliable supplier.

Another organizational structure concern arises from the question of when jurisdiction passes from the State Department to the Commerce Department for products which have moved from military into commercial use. The present law makes it clear that products in civil aircraft certified by the FAA are not subject to control under the Arms Export Control Act (State Department), but does not address whether other products which may have gone into civil use, such as gas turbine engines for pumping and power generation. We believe that any product in standard commercial use -- not just those in airplanes -- should, by law, be subject solely to Commerce Department jurisdiction.

Reauthorization of the Export Administration Act is a critical issue for the Aerospace Industries Association and its members since many of our customers, competitors and industry partners are located overseas. Our success in this complex international market will be greatly affected by U. S. export policy, including export licensing policies and procedures. We need to ensure that U. S. government decisions on export controls take into consideration the unique relationships of industries, such as aerospace, which compete, collaborate and sell on an international basis. The international nature of our business, and the dual uses of many of our products, create significant problems which must be addressed by the Export Administration Act. We stand ready to work with the Congress and other interested parties to resolve these issues.

ATTACHMENT

THE BENEFITS OF EXPORTS
TO THE
NATIONAL ECONOMY

A Case Study from the
U.S. Aircraft Industry

AEROSPACE RESEARCH CENTER
Virginia C. Lopez, Director
Celia M. Sherbeck, Economist

AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA, INC.
1725 De Sales Street, N.W., Washington, D.C. 20036

February 1983

A CASE STUDY *

Methodology

In order to get an independent evaluation of the impacts on the U.S. economy of a change in aircraft exports, the Aerospace Industries Association asked Chase Econometrics/Interactive Data Corporation (Chase) to examine these effects.

Chase used its Macroeconomic and Interindustry Models to examine the impact of a $1 billion increase in 1982 aircraft exports. Due to the long lead times in aircraft production it is assumed that enough sales have been made to cause a $1 billion increase of deliveries to export markets in 1982. Baseline for comparison was the Chase Long-Term Moderate Growth Scenario of November 1981. All monetary figures represent 1982 dollars unless otherwise stated. Direct and indirect effects were examined for the period 1982-1990.

Assumptions

Several key assumptions made in the study must be noted. First, since the $1 billion increase in aircraft exports is small relative to the three trillion dollar U.S. economy, it was assumed that the increase would have no significant impact on the general price level in the United States. Further, it was assumed that the increase in aircraft exports would have no effect on the magnitude of federal, state and local government expenditures for goods and services.

In keeping with the pattern of follow-on sales experienced in the market for aircraft, aircraft engines and spare parts, it was assumed that the initial increase of $1 billion would lead to increases in export sales for spare parts and follow-on fleet sales. In addition to the initial sales, incremental exports

---

* From a report on *The Economic Impacts of Increased Aircraft Exports*, prepared by Chase Econometrics/Interactive Data Corporation for the Aerospace Industries Association, June 1982.

TABLE 10

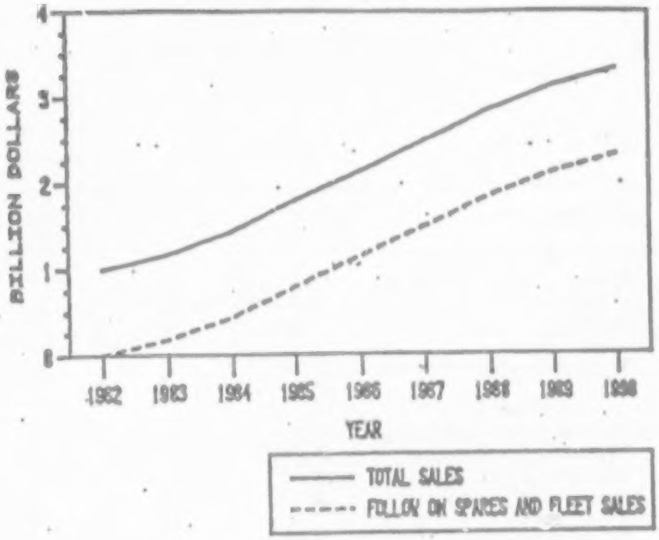
Export Assumptions
Annual Value of Aircraft and Parts Sales
1982-1990

1982	1.00
1983	0.18
1984	0.26
1985	0.34
1986	0.35
1987	0.35
1988	0.35
1989	0.28
1990	0.20
Total	3.32

Source: "The Economic Impacts of Increased Aircraft Exports" prepared by Chase Econometrics/Interactive Data Corporation, for the AIA, June 1982.

NOTE: Components may not add to totals due to rounding.

FIGURE 6
Cumulative Sales Increase In
Aircraft Exports



Source: "The Economic Impacts of Increased Aircraft Exports" prepared by Chase Econometrics/Interactive Data Corporation, for the AIA, June 1982.

TABLE 11

INDUSTRY EMPLOYMENT GAINS

	Full Time Equivalent (FTE) Job-Years		
	Total 1982-90	Annual Average	% of Total Ind. Empl.
Total Employment	148.4	16.49	.02
MAJOR INDUSTRY IMPACTS			
Transportation Equipment	46.25	5.14	.29
Aerospace	44.20	4.91	.90
Other	2.05	.23	.02
Finance and Services	22.75	2.53	.01
Trade	21.87	2.43	.01
Construction	17.84	1.98	.03
Nonelectrical Machinery	5.46	.61	.02
Electrical Machinery	5.04	.56	.02
Transportation Services	4.70	.52	.01
Fabricated Metals	4.13	.46	.03
Instruments	3.03	.34	.05
Primary Metals	2.88	.32	.02
Food and Beverages	2.28	.25	.01
Publishing	1.92	.21	.02
Communication Services	1.65	.18	.01
Chemicals	1.58	.17	.01
Rubber and Plastics	1.24	.14	.02
Agriculture	1.18	.13	.02
Stone, Clay and Glass	.94	.10	.02
Paper and Pulp	.92	.10	.01
Textiles	.65	.07	*
Furniture	.59	.07	.01
Lumber	.56	.06	.01
Public Utilities	.40	.04	*
Mining	.30	.03	*

Source: "The Economic Impacts of Increased Aircraft Exports" prepared by Chase Econometrics/Interactive Data Corporation, for the AIA, June 1982.

* Less than .01 percent.

TABLE 12
INDUSTRY OUTPUT GAINS

	SHIPMENTS		
	Total 1982-90	Annual Average	% of Total Ind. Output
	millions of 1982 dollars		
Total Output	10,655	1183	0.03
MAJOR INDUSTRY IMPACTS			
Transportation Equip	5457.9	606.4	0.20
Aerospace	5066.4	569.0	0.55
Other	391.5	37.4	0.03
Trade	1096.4	121.8	0.01
Finance and Services	513.4	57.0	*
Primary Metals	501.5	55.7	0.02
Electrical Machinery	458.0	51.0	0.02
Transportation Services	385.9	42.9	0.02
Nonelectrical Machinery	382.9	42.5	0.01
Fabricated Metals	358.1	39.8	0.02
Construction	308.7	34.3	0.02
Food and Beverages	231.5	25.7	0.01
Public Utilities	218.4	24.3	0.01
Instruments	151.3	16.8	0.03
Petroleum Refining	148.9	16.5	*
Communication Services	144.2	16.0	0.01
Chemicals	134.1	14.9	0.01
Stone, Clay, Glass	101.8	11.3	0.01
Agriculture	96.2	10.7	*
Publishing	75.1	8.3	.01
Paper & Pulp	67.5	7.5	.01
Rubber &Plastics	65.5	7.3	.01
Lumber	26.3	2.9	*
Furniture	25.9	2.9	.01

Source: "The Economic Impacts of Increased Aircraft Exports" prepared by Chase Econometrics/Interactive Data Corporation, for the AIA, June 1982.
* Less than 0.01%.

TABLE 13
IMPACT ON REAL ECONOMIC ACTIVITY

	1982	Total
GNP	1.20	6.50
Consumption	0.29	3.01
Durables	0.14	0.63
Nondurables	0.10	0.85
Services	0.05	1.53
Investment	0.06	1.07
Nonresidential Structures	0.02	0.46
Nonresidential Equipment	0.01	0.25
Residential	0.00	0.12
Inventory Change	0.03	0.24
Net Exports	0.85	2.42
Exports	1.00	3.27
Imports	0.15	0.85

Source: "The Economic Impacts of Increased Aircraft Exports" prepared by Chase Econometrics/Interactive Data Corporation, for the AIA, June 1982.

NOTE: Components may not add to totals due to rounding.

of one percent per year for spare parts were assumed for each year--1983 through 1990.

Further, it was assumed that increased follow-on fleet sales would amount to three times the value of the initial sale over a 20-year period with 75 percent of those sales falling during the 1983 to 1990 time period. This amounts to increased follow-on fleet sales of $2.24 billion.

Table 10 shows the annual value of the additional aircraft exports assumed. Figure 6 depicts the cumulative effect.

Using these follow-on fleet assumptions is tantamount to assuming an increase of $1 billion in export sales of a new generation of aircraft or sales of an older model to a new customer. An example of this might be the sale of 12 767's and 16 757's to new customers, or the additional sale of 10 to 16 747's, or 15 DC10-30's.

Results

Using the assumptions and methodology described above, Chase found that an initial increase of $1 billion in aircraft-related exports would add 44,000 full time equivalent (FTE) man-years in the aerospace industry. As a result of supplier sales and the multiplier effects describer earlier, the total impact of the $1 billion increase would be 148,000 FTE man-years during the period 1982-1990. Table 11 shows the division of these man-years into various industries. Both the total impact and the average annual impact are presented.

Total gross industry output, which includes both intermediate and final sales, follows a pattern of impacts similar to that seen in employment. Table 12 depicts the distribution of the $10 billion total impact by industry.

The initial $1 billion generates a $5.5 billion increase in GNP over the period 1982-1990. Almost half ($3.0 billion) of this reflects increased consumption resulting from the incremental direct and indirect wage earnings.

Investment increases $1.0 billion over the baseline case. The remainder of the $6.5 billion GNP increase is due to a $2.4 increase in net exports. The initial increase leads to a total gain in exports of $3.3 billion and the nearly $0.9 billion increase in imports reflects the use of foreign-made aircraft components and other unrelated goods, such as those for individual consumption.

Table 13 shows the 1982 and total 1982-1990 impact of aircraft exports on the U.S. GNP. As described above, such an increase in exports also ha impact on government receipts and expenditures through personal and corporate income taxes, social security receipts, state and local receipts, unemployment compensation payments and government interest expense. The 1982 impact on government budgets, excluding interest expense, is $400 million. Table 14 presents the cumulative effect for the nine-year period in both current year and constant 1982 dollars. The total reduction in the federal deficit, including interest expense impacts, over the nine-year period is $3.7 billion in current dollars or $2.4 billion in 1982 dollars.

TABLE 14
IMPACT ON GOVERNMENT RECEIPTS AND EXPENDITURES

	BILLIONS OF DOLLARS			
	CURRENT $		CONSTANT $	
	1982	TOTAL 1982-1990	1982	TOTAL 1982-1990
Federal Receipts	0.31	2.17	0.31	1.64
Personal Income Taxes	0.11	0.77	0.11	0.58
Corporate Taxes	0.08	0.50	0.08	0.40
Social Security Receipts	0.12	0.90	0.12	0.67
State and Local Receipts	0.04	0.23	0.04	0.18
Unemployment Compensation	-0.05	-0.30	-0.05	-0.24
Total Gov't Budget impacts	0.40	2.70	0.40	2.05

Source: "The Economic Impacts of Increased Aircraft Exports" prepared by Chase Econometrics/Interactive Data Corporation, for the AIA, June 1982.

NOTE: Components may not add to totals due to rounding.

AMERICAN INSTITUTE OF MERCHANT SHIPPING

March 30, 1983

The Honorable Jake Garn
Chairman
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

The American Institute of Merchant Shipping (AIMS) is a national trade association representing 29 U.S.-flag shipping companies which own or operate nearly 12 million deadweight tons of tankers and other ocean going bulk vessels engaged in the domestic and international trades of the United States. It has come to our attention that for the third time in approximately the last five years the Executive Branch of the United States Government is considering the export of Alaskan North Slope oil to foreign markets. We would like to register our opposition to the export of Alaskan North Slope oil whether through the lifting of export controls, some type of an exchange arrangement, or otherwise.

The purpose of this letter is to demonstrate why the Congress should pass, with the support of the Administration, legislation which will continue (after September 30, 1983) the restrictions on the export of Alaskan oil mandated in the Export Administration Act, 1979. To do otherwise is clearly not in the national security interests of the United States nor in the interests of the longstanding U.S. goal to increase our domestic energy self-reliance. Specifically, we believe that the export of Alaskan oil would:

1. Result in reduction of the quantity and quality of oil available within the United States;

2. Result in the loss of a substantial amount of U.S.-flag tanker capacity. For example, a diversion of 600,000 barrels per day would result in the loss of approximately 5,000,000 DWT, or 25-30% of the vessels of the U.S. active fleet;

1625 K STREET, N.W., SUITE 1000 • WASHINGTON, D.C. 20006
TELEPHONE (202) 783-6440 • TELEX 89-424 AIMSHIP WSH

3. Subject American consumers to potential supply disruptions and possible increased costs in case of political or military problems in the Arabian Gulf or other foreign oil producing regions.

4. Leave the defense establishment with a certainly reduced supply of oil in time of national emergency and without any assured transportation system capable of moving this essential commodity even if it were available;

5. Impact adversely on Panama Canal and Trans-Panama Pipeline revenues;

6. Result in "changing the ground rules" on extensive investments made by various business interests throughout the Continental United States as well as Panama in mid-stream. These business interests have made substantial investments in the expectation that the policies enunciated by the Administration and Congress would not suddenly be changed; and,

7. Result in exporting U.S. jobs when unemployment in the U.S. is a critical national problem. Such an ill-conceived policy would result in the loss of at least 6,000 directly related shipboard jobs and two to three times that number in indirectly related support jobs.

It is abundantly clear from the appropriate governing statutes that it is the intent of Congress that Alaskan North Slope oil should not be exported or otherwise diverted and that it is intended for domestic use and consumption. For example, in Title II, Section 202 (Congressional Findings) of the "Trans-Alaska Pipeline Authorization Act" (Public Law 93-153; 87 Stat. 576), it is stated that the Congress finds and declares that:

> (a) "The early development and delivery of oil and gas from Alaska's North Slope to domestic markets is in the national interest because of growing domestic shortages and increasing dependence upon insecure foreign sources." [Emphasis supplied.]

Similarly, in Section 203 (Congressional Authorization) it is stated as follows:

> "(a) The purpose of this Title is to insure that, because of the extensive governmental studies already made of this project and the national interest in early delivery of North Slope oil to domestic markets, the Trans-Alaska Oil Pipeline be constructed promptly without further administrative or judicial delay or impediment." [Emphasis supplied.]

Title IV, Section 410 (Equitable Allocation of North Slope Crude Oil) provides:

> "The Congress declares that the crude oil on the North Slope of Alaska is an important part of the nation's oil resources, and that the benefits of such crude oil should be equitably shared, directly or indirectly, by all regions of the country. The President shall use any authority he may have to insure an equitable allocation of available North Slope and other crude oil resources and petroleum products among all regions and all of the several states." [Emphasis supplied.]

Title I of the "Trans-Alaska Pipeline Authorization Act" in Section 101(u), "limitations on Export", amends Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 U.S.C. 185) as follows:

> "(u), ...before any crude oil subject to this Section may be exported under the limitations and licensing requirements and penalty and enforcement provisions of the Export Administration Act of 1969 the President must make and publish an expressed finding that such exports will not diminish the total quantity or quality of petroleum available to the United States, and are in the national interests and are in accord with the provisions of the Export Administration Act of 1969: Provided, that the President shall submit reports to the Congress containing findings made under this Section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this Section are in the national interests. If the Congress within this time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to the aforementioned Presidential findings shall cease." [Emphasis supplied.]

In addition to the restrictive mandates of the above mentioned Statutes, Section 7(d) of the Export Administration Act of 1979 (P.L. 96-72) specifically provides that Alaskan North Slope crude oil may be exported or exchanged only if the President makes and publishes expressed findings that the export or exchange:

(a) will not diminish the total quantity or quality of oil refined, stored or legally committed to be transported and sold within the United States;

(b) will within three months following the initiation of such exports or exchanges result in lower crude acquisition costs to American refiners who in turn must pass on at least 75% of their cost savings in the wholesale and retail prices of their petroleum products;

(c) will be pursuant to a contract which may be terminated if the crude oil supplies of the United States "are interrupted, threatened or diminished";

(d) are clearly necessary to protect the national interest; and,

(e) are in accord with the provisions of this Act.

In addition, the President is required to report such findings to the Congress. In order for the export or exchange of the crude oil to take place, Congress, both the House of Representatives and the Senate, must adopt a concurrent resolution approving the export or exchange proposal within 60 days of receiving the President's findings.

Thus it is clear, from every Statute enacted relating to the production and transportation of Alaskan North Slope oil, that it was the avowed intent of Congress that this oil should be retained for domestic use and should not in any way be exported or exchanged. This has been specifically asserted by the Congress in the policy sections of the appropriate statutes and the Congress has, in addition, specifically directed that the oil not be exported and/or exchanged and has set up a control system under which the President and the Congress must act in the event that the national interests might at some time lead to the consideration of the export or exchange of this domestic national asset and resource. There is no justification for a change in this basic policy, particularly since we are still heavily dependent on foreign oil even at this time of reduced OPEC output and especially since U.S. business interests have made substantial investments on the basis of existing policy.

The provisions of the 1979 Export Administration Act, including the Alaska Oil Export Restrictions, expire September 30, 1983. We hope and expect that the Administration will support the continuation of these restrictions on the export of Alaskan oil which is vital to the national interests of the United States, and that the Administration will support the retention of these restrictive provisions in any new export administration legislation enacted by the Congress.

We fully recognize the importance of maintaining free and open trade in the world of commerce. Those who endorse the export of Alaskan oil to Japan or to other foreign markets may rationalize doing so on the basis of promoting free trade and optimizing international oil movements. While these may be valid considerations for many issues, they are not of paramount relevance in this particular case wherein U.S. security of oil supply should be a far more important element of U.S. policy. In addition, the flow of Alaskan oil southward to domestic markets has become a firmly established national policy. The maritime industry has made heavy financial commitments in anticipation that this policy would continue to prevail, and its reversal would have serious implications for the U.S.

The dynamics of the world energy system over recent years indicate that massive stockpiles of oil are necessary to provide against the next supply/price disruption, similar to the 1973 and 1979 disasters. In response, the United States is currently attempting to fill a Strategic Petroleum Reserve (SPR) in Louisiana of about 750 million barrels at the rate of about 200,000 barrels per day. The target date for completion is in the late 1980's or beyond. The acquisition costs of this oil are running about $2 billion a year and the storage costs are currently over $1 billion and will increase to $3 billion when the reserve is filled. Although the Administration has cut considerably on imports into the SPR because of budgetary constraints, all studies show that we should aim at a larger reserve as soon as possible.

The emphasis which the Nation appropriately places on the SPR underscores the importance of maintaining an uninterrupted supply of crude oil in the event of an emergency. Permitting Alaskan oil to flow abroad would undermine this objective. Inevitably, if Alaskan crude is diverted into foreign markets, the U.S. flag domestic fleet would shrink and suitably-sized tonnage would not be available to transport Alaskan crude to the Continental United States should an emergency arise and the crude be needed.

At present, and for the foreseeable future, capacity in Alaska represents our single largest source of domestic crude. A study conducted by the National Petroleum Council showed that Alaskan capacity constituted more than half of the increase in production that could be achieved to offset a shortfall in world supplies. In this regard, Alaskan capacity and the Strategic Petroleum Reserve are comparable in protecting energy supplies for domestic consumers, and it is that necessary capacity that would be tied up in exports.

Exporting Alaskan oil will impair our ability to respond to future supply/price manipulation in more direct ways because of reduction in the physical quantities of oil we have available. By allowing exports we will reduce the Merchant Marine's capacity to move oil around our coast on a sustained basis. Under no circumstances could anyone conceive of such a development as being anything but inimical to the best interests of the United States. The bulk of our present foreseeable capacity lies in Alaska and on the West Coast, but shortages during a disruption will most likely occur on the East Coast. The time required to move oil from the wellhead in Alaska to refineries on the Gulf and East Coasts is short enough to make a significant contribution to easing the impact of crude shortages in these markets if the domestic tanker fleet is intact, which it will not be under an Alaskan oil export scenario.

Why does Japan want oil from the United States when there is an abundance of OPEC oil available? Many people believe that Japan desires to mask their large trade surplus and thereby reduce pressures to drop trade barriers in other business segments. Japan may also wish to increase the security of part of their oil supplies since it is unlikely that the U.S. would cease shipping oil to Japan, an ally, in the event of oil supply disruption. While exporting Alaskan oil will decrease the quantity of oil required by Japan direct from OPEC producers, it will, however, increase the number of parties involved in "dependency" relationships. The Japanese will be dependent upon us for a portion of their oil, although still dependent on OPEC for the largest part of their oil imports. We in turn will be dependent on OPEC and Mexico for a larger part of our oil requirements. As a consequence, during times of disruption there will be immense pressures on the United States, because if we do not interrupt the flow of oil to Japan, we will have to confront the nation providing the replacement oil, which may not be the origin of the disruption, and negotiate to keep that oil flowing. Those negotiations will most certainly involve price premiums and could be difficult and costly both economically and politically. If we do interrupt the flow of oil to Japan, it will most certainly have political repercussions.

As mentioned above, the export of Alaskan oil would undermine national security since it could result in a substantial decrease of our available oil supply in time of national emergency. Under "The Agreement on an International Energy Program," each participating country, including the United States, must share with the other countries its supplies of imported oil. As a consequence, the total supply of oil imported to replace exported Alaskan oil might not be available to the U.S. during a national emergency.

In addition, the export of Alaskan oil without restriction would displace a major portion of the tanker tonnage of the U.S. flag tanker fleet. Such a development would unquestionably cause a number of bankruptcies and corporate failures within the domestic segment of the U.S. flag fleet, where there is over one billion dollars of government guaranteed Title XI debt. It would also mean that the U.S. would not have adequate tanker capacity if needed during a national emergency, i.e., the Department of Defense would have far fewer U.S. tankers to call upon to carry oil, petroleum products and commodities domestically and to the armed forces scattered throughout the world. This situation would be exacerbated by the fact that there are so few tankers in the U.S. ready reserve fleet; the only substantive capability is what is in commercial operation in the domestic trades at present. Consequently, the national security availability would be destroyed to the extent that the commercial domestic fleet would be in great part eliminated by the export of Alaskan oil.

Many of those who support the export of Alaskan oil realize that if it is carried in foreign flag tankers, rather than U.S. flag tankers as is now the case in domestic carriage to the Continental United States, the reduced transportation costs will be reflected in higher wellhead prices in Alaska. This will generate additional tax revenues to the State of Alaska and, depending on the crude oil market, perhaps some windfall tax revenue to the Federal government. These revenues will come directly from the shipping industry which will be economically devastated. The Federal government will lose some $800 million to $1.5 billion in Federally insured Title XI mortgage loan guarantees, as well as the loss of tax revenues estimated at $150-200 million from the vessel operators in the domestic trade who would be driven out of business and their employees who would be forced out of employment. The consumer will save nothing, and during an emergency the consumer and the nation will find themselves short of crude oil and without a merchant marine able to move crude oil or support overseas military deployment.

Any consideration of the export of Alaskan oil must take into account the economic loss to the Panamanian Government and the business interests who have invested in the recently completed Trans-Panama Pipeline, since the loss of the Alaskan oil trade would substantially reduce revenues from both the Panama Canal and the pipeline. It seems extremely cynical for the United States Government to adopt the recent policy embodied in the Treaties with the Panamanian Government for the gradual takeover of the Panama Canal by the Panamanians, (followed by significant investment by both U.S. and Panamanian citizens under such an arrangement), and then turn around and adopt a policy which goes a long way toward negating the use of the Panama Canal and would wreak havoc financially with the Panamanians and other business men who have invested in the pipeline and in Panama in general.

As to international trade, exports of oil to Japan will have no effect on our balance of payments since what may be gained in oil sales to Japan will be lost in foreign oil purchases required to offset the oil sales to Japan. It may actually have a negative impact since there would be less pressure on Japan to reduce trade barriers in other business sectors. Increasing shipments outward of scarce and valuable raw materials essential to our national security interests is not the way to resolve trade problems with our large trading partners. As mentioned previously, the export of oil to Japan will also have the effect of exporting U.S. jobs at a time when unemployment is around 12 million and is a critical national problem. A diversion of approximately 600 to 625 thousand barrels per day will ultimately eliminate 5,000,000 DWT or 25-30 percent of the vessels of the U.S. active fleet. The loss of this tonnage will result in a concomitant loss of approximately 3,000 seagoing jobs and about 3,000 jobs for employees in shipyards, support and maintenance for a direct job loss of 6,000 employees. It is estimated that there would be an additional indirect job loss of two to three times that number. It hardly seems sensible to adopt a policy which will result in the exportation of U.S. jobs of this magnitude at a time when unemployment is one of the most important and critical issues facing both the Administration and the Nation.

We can ascertain no substantial benefit to the national interests of the United States from the export of Alaskan oil and, as set out above, we do see considerable negative and destructive impact. As a consequence, we are and must be strongly opposed to this proposal and hope that the Administration and the Congress will not make such a mistaken policy change which may well benefit foreign interests but can only be nothing short of a monumental blunder with respect to all aspects of United States national interests.

Sincerely,

W. M. Benkert

W. M. Benkert
President

American Federation of Labor and Congress of Industrial Organizations

815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5000

EXECUTIVE COUNCIL

LANE KIRKLAND PRESIDENT
THOMAS R. DONAHUE SECRETARY-TREASURER

John H. Lyons
S. Frank Raftery
Glenn E. Watts
Angelo Fosco
Lloyd McBride
Wm. W. Winpisinger
John DeConcini
Joyce D. Miller
Frank Drozak
Richard I. Kilroy
William H. Bywater
Thomas W. Gleason
Murray H. Finley
Sol C. Chaikin
Charles H. Pillard
Kenneth T. Blaylock
William H. Wynn
Wayne E. Glenn
John J. Sweeney
James E. Hatfield
Vincent R. Sombrotto
Marvin J. Boede
Frederick O'Neal
Albert Shanker
Edward T. Hanley
J. C. Turner
Alvin E. Heaps
John J. O'Donnell
Robert F. Goss
Douglas A. Fraser
Barbara Hutchinson
Gerald W. McEntee
Patrick J. Campbell

April 15, 1983

Honorable John H. Heinz III
Chairman, Subcommittee on
International Finance and
Monetary Policy
Committee on Banking, Housing
and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In addition to the concerns of the AFL-CIO on the export of Alaska oil, there are other provisions of the Export Administration Act that are vital to the interests of the U.S. The AFL-CIO has traditionally supported foreign policy controls, security controls, and controls on items in short supply.

The AFL-CIO has always urged limitations on the transfer of new technology in order to assure national defense and technological advances.

We will be happy to discuss these issues and other issues pertaining to the Export Administration Act and supply more information concerning our point of view for the record.

Sincerely,

Howard Marlowe

Howard Marlowe
Associate Director,
Department of Legislation

◆

CARGILL

Suite 205
1101 Fifteenth Street N. W.
Washington, D. C. 20005

Robert R. Fahs
Public Affairs

April 11, 1983

The Honorable John Heinz
U. S. Senate
Washington, D.C. 20510

Dear Senator Heinz:

As you know, the Congress is considering a renewal of the Export Administration Act.

This legislation is of particular concern to agriculture as well as industry in general since it has provided the authorities various presidents have used to curtail agricultural exports.

Enclosed is a position paper which recommends a policy consistent with recent legislative protections the Congress has provided agriculture. We would ask you to consider these recommendations or others of a similar nature so that the progress agriculture already has realized may remain secure.

Sincerely,

Robert Fahs

Export Administration Act Renewal

Agriculture shares with other sectors of the economy important concerns about the Export Administration Act. Its experience under four embargoes since 1973, however, also underlines some special interests unique to agriculture.

One concern is the "umbrella effect" of grain embargoes. Because agricultural commodities are essentially undifferentiated and grown in and exported from many countries, trade flows quickly provide substitutes for exports embargoed by the United States. In the short term, this results in sales forfeited by the United States to other exporters. Longer term, this provides competing exporting countries incentives to expand their production and exports under the umbrella created by the U.S. embargo.

A second special concern centers on the unique requirements for reliable food supplies. Food consumption cannot be deferred. If food supplies are interrupted, the consequences quickly spread from the economic to the political sector. Lack of supplies or unacceptable increases in prices can be the prelude to unrest, changes in government and, in extreme cases, revolution. Because of this, governments in food-deficit countries place special emphasis on securing reliable food supplies--either through expensive self-sufficiency plans or securing supply assurances from exporters. The United States must establish and maintain an unblemished reputation for reliable performance if it seeks to serve these markets through exports.

The price effects of embargoes in commodity markets also are much more pervasive than in manufacturing. Embargoes result in lost sales in both sectors. In commodity markets, however, the extra supplies pressed back onto the market by an embargo depress prices across-the-board. Farmers, therefore, lose not only income from the embargoed sales but also income from resulting lower prices on all their other sales as well.

The Soviet grain embargo also showed that agriculture suffers from a "locked-in" syndrome under foreign policy embargoes. It was evident quite quickly that the grain embargo was costly at home and ineffective in pressuring the Soviet Union. Candidate Reagan campaigned against it and promised to lift it. Still, it continued in place for four months after he became President. The only apparent reason was the argument that lifting the embargo would be "sending the wrong message." In order to avoid getting locked in to future mistaken embargoes, embargoes should be self-terminating and require an affirmative action by the President to re-impose them.

Finally, using grain for "leverage" is a reversible process. In fact, since U.S. grain farmers depend on foreign markets for about one-third of their sales while most importing countries typically take less than five percent of their total grain use from the United States, the leverage may work in reverse. Farmers need foreign customers more than most foreign customers need U.S. supplies. PRC threats to reduce U.S. grain and oilseed imports unless a satisfactory textiles pact is concluded is simply one example of how America's supposed grain leverage can in fact be reversed against it. Agriculture needs to establish in policy and conduct that grain is an economic good, not a diplomatic tool.

Recommendations

For these and other reasons, the United States should exempt food (and medicine) from foreign-policy and short-supply controls under the EAA. Agricultural exports--because of umbrella effects, reliability concerns, pervasive income losses, the "locked-in" syndrome and the reversibility of leverage--deserve to be exempted from export controls except when America's vital national interests are at stake. Such an exemption is the best policy.

Foreign Policy Controls

In the absence of such a clear exemption, several steps could be taken to minimize the consequences of embargoes. Under the "foreign policy" provisions of the EAA, the following provisions should be included:

(1) preservation of the "contract sanctity" assurances incorporated in the recently passed Commodity Futures Act;

(2) a requirement of more "transparency" in the decision-making process leading up to imposition of controls (i.e., the President should announce that "any controls imposed will be effective as of this moment, but the Administration will consult with Congress, allies and affected industries in the coming week to determine the necessity for and shape of any such controls before a final decision is made");

(3) a requirement that the President specify the foreign policy objectives to be achieved by such controls and a regular review of whether the controls are contributing to attainment of that goal and what costs are being incurred by the affected domestic sector;

(4) in view of the substitutability of agricultural commodities, a requirement that controls be multilateral and involve effective commitments of cooperation from the other major exporters of the affected commodities and their substitutes;

(5) protections against extra-territorial application of trade restrictions to foreign affiliates of U.S. companies in their competition with foreign-based firms trading non-U.S. commodities;

(6) automatic expiration of controls in 3 months, requiring an affirmative presidential act to put them into effect again; and

(7) a requirement that any controls on trade must be part of "across-the-board" sanctions affecting all trade, investment, educational, cultural and scientific exchange relationships; there is no clear reason why trade should be singled out under foreign-policy-control authorities.

Short Supply Controls

Today's agricultural commodity markets are international in scope. In this environment, short-supply controls are highly inequitable (imposing the largest costs on the poorest nations) and generally ineffective (impairing the market signals that prompt the necessary adjustments in consumption and expanded output that are the real solutions to temporary supply shortages). For these reasons, agricultural commodities should be exempted from short-supply controls.

Short of such a clear exemption, the following provisions should be included in the new EAA:

(1) a provision analogous to the "contract sanctity" concept under the foreign-policy authority that provides that any unshipped portions of contracts in place when controls are imposed are deferred into new-crop positions (i.e., rather than abrogate the contract, perform on it by deferring a portion until supplies are replenished);

(2) require "transparency" provisions similar to those described above for foreign policy controls, permitting consultations with exporters and foreign buyers to ease disruptions;

(3) automatic expiration of controls in 30 days, requiring an affirmative presidential act to impose them again.

One final observation about the EAA should be made. Several suggestions have been made for "embargo insurance." While the concept is superficially attractive, there are telling objections to it for agriculture.

The real costs of an agricultural embargo lie beyond the easily identifiable (and insurable) contract losses. They involve depressed market prices overall, the stimulus to competing exporting nations and encouragement for greater self-sufficiency among importers. In other words, the real costs of an agricultural embargo are long-term and non-quantifiable.

In these circumstances, "embargo insurance" could have the perverse effect of encouraging unjustifiable embargoes. This could arise by permitting the President to believe (or at least assert) that the domestic economic costs of an embargo are covered by the insurance. Since the full costs are drastically understated, embargo insurance could contribute to bad decisions.

For these reasons, embargo insurance should not be offered. The real need is to prevent imposition of ill-considered, counter-productive embargoes, and the costs of such actions (political and economic) are among the most important deterrents.

Confederation of British Industry
Centre Point
103 New Oxford Street
London WC1A 1DU
Telephone 01-379 7400
Telex 21332
Telegrams Cobustry London WC1

From
Kenneth Edwards MBE
Deputy Director-General

19 April 1983

The Honorable Jake Garn
Chairman, Senate Committee on
Banking, Housing and
Urban Affairs
5300 Dirksen Senate Office Building
Washington DC

Dear Senator

US EXPORT ADMINISTRATION ACT (EAA)

May I commend to your attention the attached submission on the EAA which the CBI has drawn up as a contribution to the review of the Act with which Congress is now proceeding.

The CBI has 12,000 companies drawn from every sector of the economy in direct membership and many thousands more through its constituent trade associations. A large number of these firms turn to US suppliers for goods and technology or are themselves affiliates of US corporations. You will thus understand why we are bound to voice deep concern at the impact of this legislation on trade and investment links between our two countries.

Regrettably, to our mind, the Bill recently introduced by the Administration into Congress does nothing to end the reach of the legislation beyond US national frontiers and fails to protect adequately contracts already in existence when controls are imposed.

We believe that the Act will continue to do serious harm to economic and political relationships across the Atlantic, and we urge you to support amendment in the sense advocated by our paper.

Yours sincerely

Ken Edwards

Confederation of British Industry
Centre Point
103 New Oxford Street
London WC1A 1DU
Telephone 01-379 7400
Telex 21332

Director-General
Sir Terence Beckett CBE

Secretary
Denis Jackson

G 137 83

CBI SUBMISSION ON THE US EXPORT ADMINISTRATION ACT

Introduction and background

1 The current Congressional review of the Export Administration Act (EAA) provides an important opportunity to reconsider the use of its powers to control the USA's export trade for foreign policy reasons.

2 As a sovereign nation the USA is, of course, free to regulate its trade with other countries at its frontiers as it will. The recent dispute over the supply of equipment for the West Siberian pipeline did, however, highlight not only shortcomings in the Act but also the severe disruption to international commerce and long established relationships caused by attempts to apply the Act beyond the frontiers of the United States. British business, as a major partner of the USA in the exchange of goods, technology and industrial investment, therefore has a legitimate interest in the future shape of the EAA and the way in which it is put into effect.

3 The Confederation of British Industry (CBI) believes that controls for foreign policy purposes should be abandoned or at least curtailed for two reasons. The first is that they harm political relations between the USA and its allies and, we believe, inflict economic damage on both; and the second is that they have no counterpart in the national laws of America's major trading partners, command no support internationally, being of doubtful validity under international law, and are as a result ineffective in achieving the policy goals for which they are imposed.

4 The growing importance of international trade and investment in the world economy has been a major feature of the post-war period. Even countries richly endowed with natural resources like the USA have become increasingly dependent on other countries both for markets and for sources of supply. The USA has played a leading role in promoting a liberal framework for international trade and investment in organisations such as the GATT and OECD, arguing for the removal of barriers to trade, national (non-discriminatory) treatment of multinational enterprises, and the orderly settlement of disputes between countries. Specifically, it used to follow the principle of opposing the injection of politics into international trade through the use of boycotts.

5 However, the USA's liberal stand on these issues is in powerful contrast to the broad scope of her powers to control foreign trade and her proven readiness to use them against her allies as well as other countries. No other major Western State has so extensive powers as those found in the EAA. Moreover, the President's Export Council recently found that no other such nation had formal arrangements for regulating trade on foreign policy grounds; nor did other countries try to control the flow of technology except for military reasons, or assert jurisdiction over individuals and companies beyond their frontiers, or apply the law retrospectively for the purpose.

6 Resort to these powers by the USA has been growing. The West Siberian pipeline dispute is the latest in a series of cases which have provoked mounting concern amongst the USA's trading partners. From the early attempts to control trade

with the USSR and China from the 1950s onwards, through the controls on Cuba in the 1960s, and the counter measures of the 1970s applied to the Arab boycott, the pace and ambition of US regulation has increased markedly. This regulation applied in the main to goods of US origin, but in more recent years the US Administration has tried to regulate the export of goods from other sources, on the basis of its purported jurisdiction over foreign subsidiaries of US domestic concerns, or over goods or technology of US origin, or by means of contractual arrangements, and has endeavoured to apply the controls retrospectively.

7 The activation of these powers has proved to be an unhappy turning point in international trade. Regrettably the use of EAA controls has had a negligible effect on the policies of the USSR and Poland; and the principal result has been to alienate the USA's main trading partners and allies.

8 Although the conflict within the NATO Alliance over the West Siberian gas pipeline has been resolved, it is worth spelling out what the reactions to it have been and how friendly nations are likely to respond if similar measures were again imposed by the US Administration.

Consequences of the exercise of EAA controls

9 The first and most obvious consequence, on which it is not for us to dwell, is a reduction in direct sales opportunities for US suppliers in large overseas markets, with a loss of output, jobs and foreign exchange. Although the USA is not so heavily dependent on external trade for growth as West European countries and the export factor accordingly weighs less in consideration of foreign policy, this difference of emphasis may well be becoming smaller. We note, for example, that exports account now for 20 per cent of US industrial output..

10 The second and more serious effect is the doubt thrown on the reliability of US suppliers of inputs for foreign manufacturers and processors. Since the EAA can be applied to all goods, of whatever level of technology, the entire range of US products - agricultural, raw materials and manufactures - must now be regarded as being at risk from a sudden and retrospective application of export controls.

11 Experiences over the West Siberian pipeline dispute alone illustrate how widely the net of EAA regulations can be spread and thus the scale of doubt cast in the mind of UK companies who normally turn to US sources for products and know-how. In countering the effects of EAA controls on pipeline equipment, the UK Government was obliged to place Directions under Section 1(3) of the Protection of Trading Interests Act 1980 on a wholly UK company using US origin technology and equipment under licence, on UK subsidiaries of US companies using US origin technology or equipment, and on UK subsidiaries of US companies who were using wholly UK origin technology or equipment.

12 A spot check by the CBI has shown that UK companies whose preferred source would be a US or US-controlled one are now looking elsewhere because of the threat of US export restrictions on goods and technology. Such uncertainty attaches, for example, to the supply of a wide range of electronic components; equipment related to offshore oil-field development; computer hardware and instrumentation associated with feed-processing equipment; chemical plant; and laboratory equipment.

13 It should also be noted that the UK Export Credits Guarantee Department (ECGD) in its Exporters' Comprehensive Guarantee, covering credit of up to two years, has now excluded US Government action as a cause of loss, where the UK exports are destined for the USSR, Cuba or Libya. The same provisions

apply to specific guarantees for suppliers' credits of longer than two years; and the ECGD will also seek recourse to the UK exporter for 100% of the contract value if he fails to supply goods for this reason under buyer credits extended to these markets. All this means that a UK exporter must now either turn to a non-US source of supply, or try to negotiate an exclusion of liability clause in his export contract, or assume the risk himself. In the last case his only escape from loss would be to sue US companies for breach of contract, a costly process with uncertain result. The prospect of litigation is clearly not an incentive to take up business relations.

14 Such doubts are not merely the concern of US business in its overseas operations. Foreign industrial investment in the USA is large and has been growing rapidly over the last decade. It amounted to $65.5-billion in 1980. Existing and more particularly future investment can only be discouraged by the existence of wide-ranging powers to control exports, and will inevitably lead overseas investors to question the advisability of locating plants and expanding their existing stakes in the USA.

15 The third result is to reinforce the arguments of those in West European countries who doubt the benefit of US industrial investment in their countries. The UK Government welcomes investment from the USA; all it asks is that such investment is subject to UK, not US, laws and policies. Although not to be taken as indicative of a trend, it is nonetheless relevant to note that in 1981 the UK Monopolies and Mergers Commission blocked a bid for the Davy Corporation of the UK by the Enserch Corporation of Dallas, Texas; and among several reasons given by the Commission in its report was the likely impact of a number of US statutes including the EAA on a major exporting company, if it were to be owned and controlled from the USA.

16 In its evidence to the Commission, the Enserch Corporation stated that the USA had only imposed controls extra-territorially on offshore trade after extensive multilateral consultation; and the US Administration itself told the UK Department of Trade that the use of EAA controls to such an extent would mark a major change of American policy. Within eleven months of the appearance of the Commission's report, the same US Administration had put these controls into effect without consultation. It must be expected that all major proposed acquisitions of UK businesses by US corporations will be open to objection on the grounds of the possible application of the EAA. One of the yardsticks which the Monopolies and Mergers Commission has to apply under the public interest test refers to ".... maintaining and promoting competitive activity in markets outside the United Kingdom on the part of producers of goods, and of suppliers of goods and services, in the United Kingdom." (Section 84, Fair Trading Act 1973.)

17 The fourth outcome of the exercise of these powers is to undermine a fundamental element in the USA's international trade and investment policy. For years the USA has pressed for the national treatment of foreign-controlled enterprises by host governments; and the 1976 OECD Declaration on International Investment and Multinational Enterprises contained a section (II.i, implemented by a Decision of the OECD Council):

> ".... Member Countries should, consistent with their needs to maintain public order to protect their essential security interests and to fulfil commitments relating to international peace and security, accord to enterprises operating in their territories and owned or controlled directly or indirectly by

> nationals of another Member Country (hereinafter referred to as Foreign Controlled Enterprises) treatment under their laws, regulations and administrative practices, consistent with international law and no less favourable than that accorded in like situations to domestic enterprises (hereinafter referred to as National Treatment)."

18 It will be inconsistent for the USA to urge that US-owned subsidiaries overseas should be treated as nationals of the host country, when it clearly regards them as subject to US jurisdiction, even if the US company owns as little as 25% of their shareholding or controls through some other link such as a licensing arrangement.

19 Also, attempts to extend the reach of US laws beyond national frontiers run counter to principles clearly recognised in the Guidelines for Multinational Enterprises which at their inception were jointly commended to some 800 American corporations by the US Secretaries of State, Treasury and Commerce. Under the heading of General Policies, the Guidelines urge that enterprises should:

> "take fully into account established general policy objectives of the Member Countries in which they operate;
>
> in particular, give due consideration to those countries' aims and priorities with regard to economic and social progress, including industrial and regional development, the protection of the environment, the creation of employment opportunities, the promotion of innovation and the transfer of technology; ....

> ......allow their component entities freedom to develop their activities and to exploit their competitive advantage in domestic and foreign markets, consistent with the need for specialisation and sound commercial practice."

20 Where obedience to US laws is likely to bring American-controlled overseas subsidiaries sharply into conflict with the interests of the local economy, host governments are likely to think twice before allowing them to become major sources of technology or suppliers for public sector contracts.

Legal objections to foreign policy controls

21 As noted, the foreign policy controls in the EAA are unique amongst the legislation of Western countries. This isolation is not surprising. The legal basis of extraterritorial assertion of jurisdiction by the United States is not accepted by most OECD countries and has been a source of international discontent for some years. While most of the disputes in the past concerned the regulation of markets in goods, the West Siberian pipeline incident added new dimensions to this type of conflict through the US basing its jurisdiction on the existence of a US shareholding in foreign company or the incorporation of US origin goods or technology in products manufactured overseas. In the latter case US industry was required by the US Administration to assert control over goods and technology it had sold to foreign partners in a way which would be roundly condemned under US federal legislation as abuse of monopoly rights if the practice occurred as a result of solely private initiative in the US market. The demands of US public policy thus lead to measures which transgress the norms of international law and in other contexts would be repugnant to its own legislation.

22 The increasing frequency of assertions of extraterritorial jurisdiction by the US Administration for a variety of reasons (eg anti-trust, discovery of documents for regulatory purposes) has already inspired protective legislation in the UK, France, the Netherlands and elsewhere. Moreover, as the ruling in the case of *CEP (France) v Sensor (Netherlands)* at the Hague showed, foreign courts are not ready to accept measures which overturn settled principles of international law or the terms of treaty commitments (in this instance, the nationality of companies, as prescribed by Article XXIII sub 3 of the USA-Netherlands Treaty of Friendship, Commerce and Navigation of 1956). Under this ruling, Sensor BV, a subsidiary of Geosource of Houston, Texas, was required to fulfil its contract with CEP (France) to supply 2,400 strings of geophones for use on the West Siberian pipeline, contrary to the instructions given by its US parent under EAA regulations.

23 Also, as is well known, the European Community itself protested vigorously at the June 1982 Regulations made under the EAA and has recently submitted an aide-memoire suggesting changes to US policy and practice which should be made as part of the review of the Act. It is thus apparent that the USA stands alone in its attempt to impose such controls. In particular, major European states are most unlikely ever to accept the validity of any regulations made under the EAA or other US laws, the intention or effect of which is to regulate the conduct of companies incorporated and carrying on business outside the USA.

24 In view of this, foreign policy-makers in the USA should consider whether future attempts to exercise such powers will further their objectives. There is now small likelihood that measures could be operated in such a way as to regulate the conduct of European companies; and the

use of EAA powers may therefore be effective only in cases where other sources of supply are not available - cases which are likely to be few, given that much of even the most advanced technology is now indigenous to Western Europe and Japan. Experience suggests that foreign policy goals can only be effectively pursued through trade embargoes when a wide consensus exists in favour of their use. In short, whilst Europe looks to the USA to lead the Western Alliance, that leadership should be exercised through a process of consultation and consent as to both means and ends.

Reforming the EAA

25 As stated, the powers contained in the EAA for foreign policy purposes constitute an element of risk which European companies have to take into account when they make business decisions. Where their choice of partners reflects other than economic considerations, this must be regarded as a misallocation of resources which benefits neither the USA nor Europe. More generally, the EAA regulations weaken the liberal framework for international trade and investment which binds the Western Alliance, while failing to achieve the policy aims which are the reason for their existence. On these grounds we would urge that they be abolished. If this were done, the Administration would, of course, still retain comprehensive powers in terms of the Trading with the Enemy Act and the International Emergency Economic Powers Act (or similar elements in the EAA).

26 Only if abolition of the foreign policy controls cannot be achieved should other options be considered. Any alternative should include a requirement that the Administration must consult closely with allies to determine their respective political reactions to embargoes on US goods and technology and the likely effectiveness of such measures. Foreign policy

priorities and strategies may vary from one Administration to another in the light of changing international circumstances; and political shifts of this kind are impossible for business to predict and thus negate any basis for planning. Companies located in countries which are major trading partners of the USA may thus be exposed to serious financial loss and have to lay off much or all of their workforce if controls gravely disrupt their trading patterns. Especially in time of recession friendly governments cannot accept heavy economic costs unless they themselves judge that political benefits justify them. Measures influenced solely by the perceptions of other administrations and which in any event are generally unacceptable under the principles of international law are bound to be strongly opposed.

27 As an additional safeguard, Congressional hearings should be made mandatory if the Administration intends to make regulations under the EAA introducing new controls. Scrutiny would be provided for, so as to ensure that controls were not imposed, other than in exceptional circumstances, on a friendly nation which had indicated they ran counter to its interests. In doing so, Congress would need to assume that friendly governments promoted exports to all countries subject only to any specific regulations or ban under their laws for military or economic necessity.

28 Also, the EAA should be amended to prohibit the retroactive use of controls which frustrate contracts concluded by, or important to, companies in friendly nations. We are glad to note that the US Administration recognises the importance of this issue in the proposals for revising the Act contained in its recently introduced Bill. However, we do not consider that this Bill gives adequate protection to existing sales contracts by excluding from controls those which require delivery within 270 days of regulations coming into force.

It is by no means uncommon in large projects for goods to be supplied over periods as long as five years. Contracts of this kind are normally of high value; and if they should be put in jeopardy, the solvency of the lead firm and many sub-contractors is often at stake. We thus believe that the Administration's proposal does not adequately uphold the sanctity of contract.

29 Finally, the CBI does not consider that the Administration should encourage submission clauses in contracts between US corporations and their partners in friendly countries. They represent an unwarranted intrusion into the freedom of contract and introduce an element of uncertainty into business relations.

Consultation: a proposal

30 Whilst recognising the need to control shipments of goods likely to aid the military effort of a potential enemy, the CBI has always believed that the use of embargoes on external trade for foreign policy purposes is likely to be a two-edged weapon. To sustain pressure on an adversary, they need to be consistently applied and within a framework of agreement supported in spirit and result by friendly nations. We respectfully submit that these arguments equally hold for the USA and that the EAA should be amended to take account of them.

31 We believe that it would be in the interests of the Western Alliance that there should be recognised machinery for consultation and the resolution of disputes which may arise

from the use of powers of the kind found in the EAA. The most obvious forum to be considered for the purpose is the OECD, which groups the members of NATO and all the industrial nations with a major stake in international trade. With consultative mechanisms in the field of restrictive business practices and the guidelines for multinational enterprises, the OECD already has experience and precedents on which to build.

32 Under such an arrangement the country planning to take measures which might damage the interests of other signatory states would have to give notice of its intention, consider representations made by them about the possible effects of its action on their economic interests, and examine how injury to them might be avoided or mitigated. If the country planning export controls failed to give notice of its intention, any OECD signatory nation could initiate the consultation procedure, if it believed that its economic interests were at risk.

33 We urge that the USA should give serious attention to developing such a proposal with its OECD partners and offer the suggestion as one which is material to the review of the EAA.

Statement in Support of Retention of Section 7(c) in the Reauthorization of the Export Administration Act of 1979

S. 397 and S. 979

by

Norman Lavin, President

Brass and Bronze Ingot Institute

This statement is in support of retention of Section 7(c) of the Export Administration Act of 1979. This subsection provides for a procedure and time schedule to be followed by the Secretary of Commerce for considering petitions requesting monitoring or export controls on recyclable metals. The members of the Brass and Bronze Ingot Institute (BBII) believe it is important that this provision be retained in the Export Administration Act so that timely decisions will be made by the Secretary when there are severe shortages of recyclable metals in the domestic market.

The Brass and Bronze Ingot Institute is a national trade association representing the domestic brass and bronze ingot industry. The ingot industry serves an important role in the economy by recycling copper and other nonferrous scrap and waste. During the past five years the domestic ingot industry has recycled over two billion pounds of copper base scrap. This recycling saves not only valuable non-renewable metallic resources, but also large amounts of energy. United States industry consumes more primary copper than is produced from domestic ores, and part of this shortfall is covered by recycling.

The scrap is converted into brass and bronze ingot, an economic raw material that is used by the nonferrous foundry industry to produce castings. These castings are used in thousands of consumer and industrial products.

For more than 30 years, until January 1972, exporters of copper base scrap were required to obtain validated export licenses from the Department of Commerce before making export shipments. This procedure provided the Secretary with an excellent tool for monitoring exports and controling the level of exports during periods of domestic shortage. This requirement was dropped in 1972 and in 1978 the domestic scrap market was severely disrupted by a surge in exports of copper base scrap. The 1978 exports were 47% higher than the 1977 exports, and only 7% below the previous all-time record for copper base scrap exports in 1960. In early 1979 the BBII made a request to the Department of Commerce for monitoring of copper base scrap so that appropriate timely action could be taken if exports continued at the high level reached in January 1979. The Department of Commerce did not have any specific procedure for considering this type of request for monitoring in 1979. However, the Department of Commerce "reviewed" the situation and advised the BBII that they did not believe a formal export monitoring system for copper base scrap was needed. In spite of this "review" and conclusion that no action was needed, exports continued to increase in 1979 and 1980. The 1980 exports reached a new record high by exceeding 1960 by 15%.

When the request was made to the Department of Commerce for monitoring in 1979, the members of the BBII believed that there was a need for a formalized procedure to review requests for monitoring and/or export controls similar to the procedures used by the International Trade Commission to consider requests for import controls. It was felt that only with a formalized procedure, all interested parties would have the opportunity to have their views considered in a timely manner before a decision was made by the Secretary. The procedure provided for in Section 7(c) of the Export Administration Act of 1979, was an answer to this need and was fully supported by the BBII.

Section 7(c) of the Act provides only for a procedure and time schedule for the Secretary of Commerce to use in considering petitions for monitoring or controls. It does not establish standards for the Secretary to use in making a determination as to whether or not monitoring or controls should be established.

The members of the BBII believe that the procedure provided for in Section 7(c) was not only necessary and proper, but long overdue. During the previous 20 years, when the industry was faced with severe copper base scrap export problems, there was no established procedure for exporters or consumers to follow in making their concerns known to the Secretary of Commerce. The experience of the ingot industry during that time was: (1) there was too much delay by the Secretary in instituting controls; (2) the level of controls were not adequate; and (3) the controls were removed too early.

The administration has proposed deleting Section 7(c) from the Act, as well as all other special provisions in the short supply section that relate to particular items. An administration representative, in support of these deletions, said ". . . the President should have the latitude and flexibility to determine the need for short supply controls as they occur . . ." As noted above, Section 7(c) only specifies a procedure to be followed in considering a request for monitoring or controls and it does not in any way restrict the

President's or Secretary of Commerce's "latitude and flexibility."

Members of the BBII have not used the procedure provided for in Section 7(c) since it was enacted in late 1979. However, they recommend and strongly urge that Section 7(c) be retained in the Export Administration Act so that it will be available if market conditions call for its use.

# # #

Note: Norman Lavin, president of the Brass and Bronze Ingot Institute, is president of R. Lavin & Sons, Inc., Chicago, Illinois.

Brass and Bronze Ingot Institute
Washington, D.C. office
Suite 535
1511 K Street N.W.
Washington, D.C. 20005
(202) 628-8777

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

AD

May 11, 1983

The Honorable John Heinz
United States Senate
SR-277, Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Heinz:

It is my understanding that the Banking, Housing and Urban Affairs Committee is currently considering reauthorization of the Export Administration Act. With this in mind, I respectfully request that the attached position paper relating to the export of domestic crude oil be included in the official hearing record.

As you will note, the paper recommends that a limited amount of Alaskan Oil (200,000 B/D of existing production and future production) be authorized for export on U.S. built tankers manned by American crews and subject to certain Presidential findings and a Congressional veto. Our analysis has led us to conclude that such exportation would be in the national interest for a number of reasons, including increased federal revenues, strengthened national security, accelerated domestic oil development, a better balance of trade, and the establishment of a better oil pricing mechanism for North Slope crude.

I appreciate this opportunity to express the State's position on this important matter. If we can be of further assistance in your deliberations on the Export Administration Act, please let us know.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
WASHINGTON, D.C.

THE NATIONAL INTEREST IN OIL EXPORT

Suggested Approach: There are currently several layers of statutory restrictions on the export of crude oil. These restrictions were well intended, but they have not yielded beneficial results to our nation. We are proposing that export restrictions be relaxed to permit the limited export of crude oil (200,000 B/D of existing North Slope production and future production). This export would occur on American built tankers using U.S. crews and maintained in U.S. shipyards. We do not propose the repeal of the existing requirement for a Presidential finding that such export would be in the National interest (subject to Congressional veto). We feel this approach would produce very significant benefits to the United States.

Benefits of Limited Oil Export

- A large increase in federal revenues. Oil exports from Alaska to Pacific Rim nations would result in significant transportation savings as the shipping route to those nations is shorter and more direct than to the U.S. Gulf Coast where one half of Alaskan oil is currently transported. Depending on world market conditions, these savings could mean an additional $170 million in annual windfall profit tax payments to the U.S. treasury assuming export of 200,000 B/D.

- Strengthened national security. Oil exports from the U.S. to our Pacific Rim allies would correspondingly reduce to the same extent their reliance on unstable foreign sources and the likelihood of a natural gas joint venture between the Japanese and the Soviet Union.

- A more favorable trade balance between the U.S. and Japan and the U.S. and Mexico. Should the Japanese purchase Alaskan oil, it would substantially reduce our $18 billion trade deficit with Japan. Mexico has the ability to increase deliveries to the Gulf Coast which would help reduce its foreign debt, much of which is held by U.S. lending institutions. In addition, authorization for limited exports could provide the basis for securing significant trade concessions from Japan and other Pacific trading partners (e.g. automobile, agricultural imports).

- Increased oil production in Alaska. The opening of new markets for Alaskan oil will serve as an incentive for increased exploration and development of oil in expensive frontier areas. It may also encourage additional investment in developing Alaska's oil, gas, and coal resources.

- The establishment of an objectively ascertainable value for Alaskan oil. Limited export of Alaskan oil would result in an easily determinable price at Valdez (terminus of Trans-Alaska pipeline). This price is very important in the computation of federal and State taxes and is key to a dispute over oil pricing practices which involves the ability of independent refiners and marketers to compete with some of the major North Slope producers. It would also help to avoid additional costly future litigation.

Using this approach, these desirable goals may be obtained without penalty to U.S. consumers and the U.S. maritime industry.

Much of the opposition to export of some volume of Alaska oil has been generated by arguments based on extreme assumptions. These include threats to national security premised on the exportation of all (1.6 million B/D) production of Alaskan oil, threats to the maritime industry on the assumption that foreign tankers would carry exported oil, and impacts on the American consumer based on the acquisition of higher cost replacement oil.

These threats would not materialize under the State of Alaska's proposal.

National security would not be compromised; it would be strengthened. Strong support for limited (200,000 B/D) has been expressed by the President's advisors at the National Security Council.

The U.S. merchant marine industry would not be penalized as U.S. (Jones Act) oil tankers with U.S. crews would carry any export oil. Merchant marine employment should actually increase as new oil production results from incentives created by an export market.

There would be no adverse impact on consumers as the price of oil, adjusted for quality differentials, is generally determined by the world oil market. In a free market, replacement oil should be available on the Gulf and East coasts at the same price as North Slope crude. Oil exchanges may be arranged which would have the net result of lowering transportation costs.

It should be noted that current law permits the export of minimally refined products. It is anomalous that this is permitted while crude oil may not be exported. Approximately 700,000 B/D of these products are currently being exported from the United States.

In summary, several very significant national benefits may be obtained by a relaxation of restrictions on oil exports. By utilizing the approach suggested here, the benefits of export may be obtained without incurring liabilities.

1884 · 1984
A CENTURY OF ELECTRICAL PROGRESS

IEEE **UNITED STATES ACTIVITIES BOARD**
THE INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS, INC.

EDWARD J. DOYLE, P.E.
Vice President
Professional Activities

PLEASE REPLY TO:
1111 19th Street N.W. Suite 608
Washington, DC 20036, U.S.A.
Telephone: (202) 785-0017
Telecopier: (202) 785-0835

TESTIMONY OF THE IEEE TECHNOLOGY TRANSFER COMMITTEE ON THE EXPORT ADMINISTRATION ACT OF 1983

IEEE, an organization composed of members who serve both high technology industries and the universities that produce engineers and scientists who contribute the ideas, believes that export policy is a major component of a "national technology policy." An effective national technology policy should balance national security needs with the economic need to expand U.S. exports and the U.S. share of world markets.

These views are based on the belief that the economic strength of the U.S. is a major element in the guarantee of our national security in addition to our military strength. They are based on the further belief that we maintain our economic strength by producing a continuous stream of innovations and inventions. In short, we should facilitate rather than inhibit innovation by a tangle of regulations.

A key resource of the technological leader is lead time. It is essential that we capitalize on this resource, that we be quick to innovate and quick to capitalize and market.

The U.S. Activities Board of IEEE, after a year-long study of current efforts to impose new rules governing technology, concluded (1) that controls should focus on leading-edge technological know-how, not necessarily products, and (2) that effective implementation of controls should be instituted with an informed knowledge of the availability of similar goods and technologies in foreign countries. A copy of a position paper, adopted on Nov. 17, 1982, is attached as a part of this statement.

IEEE also believes that cooperation between the government and private industry in fixing and administering export controls is essential. As stated in its position paper,

> The government should solicit the professional counsel of knowledgeable non-government individuals in establishing joint advisory entities to evaluate specific technology items from the viewpoint of industry, commerce, and national security, and to review periodically these value estimates. Individuals who create the technology are well equipped to advise government on the importance of specific technologies and the appropriate, limitations on their dissemination.

In general, we support many of the concepts embodied in two bills pending in Congress to renew the charter of the Export Administration Act. They are S. 397, sponsored by Sen. John Heinz of Pennsylvania, and H.R. 1566, sponsored by Rep. Don Bonker of Washington.

At the same time, we welcome assurances offered by the Administration that its legislative proposal is based on the belief that "Economic strength provides the foundation for our leadership responsibilities in the world." We welcome the statement of Lionel Olmer, the Under Secretary of Commerce, that the Administration "is committed to strengthening and improving the effectiveness of COCOM." * We believe multilateral controls are essential to an effective international trade position.

Dual-Use Items

Many electronic products for commercial end-use are controlled for reasons of national security. With some exception, most strategic or dual-use items require a validated license for export (except to Canada). We agree with conclusions reached by the GAO ** that the licensing requirements imposed for reasons of national security can be reduced substantially without affecting the integrity of the export control program. GAO has concluded that the present system is more a paper exercise than a control mechanism.

---

* Testimony before the House subcommittee on International Economic Policy on April 5, 1983.

** Report of the Comptroller General of the U.S., (GAO/ID-82-14), May 26, 1982.

Coordinating Committee for Multilateral Export Controls (COCOM)

Export controls, to be effective, must be multilateral. The instrument for multilateral controls, COCOM, should be strengthened and given additional technical resources to carry out its mission. We believe operational improvements could be achieved by bringing COCOM countries under a treaty framework to limit the ability of individual countries to make their own interpretations of the rules.

Military Critical Technology List

Many technologies developed for commercial use are more advanced than technologies currently used for military purposes. DOD relies increasingly on technologies developed for commercial purposes. The quality of commercial technology available to DOD from U.S. companies depends to a significant degree upon the ability of those companies to participate effectively in the free world market.

Therefore, every effort should be made to limit the MCTL to only those technologies with clearly significant military implications. At the same time efforts should be stepped up to decontrol those products which embody technology which has only a remote military significance and which is available from other industrialized countries.

5/13/83

Page 1 of 3

1884 · 1984
A CENTURY OF ELECTRICAL PROGRESS
IEEE
345 East 47th Street
New York, New York 10017
(212) 705-7900
1111 19th Street N.W.
Washington, D.C. 20036
(202) 785-0017

ENTITY POSITION STATEMENT

Subject:

TECHNOLOGY TRANSFER IN THE UNITED STATES

"An Entity Position Statement is a document, developed to express an opinion by an IEEE entity on a specific topic, issued in the name of the entity. It is distinguished from an IEEE Position Paper, which is issued in the name of the Institute to express a formal opinion."—From IEEE Policy 14 (1979)

IEEE Entity Initiating the Statement: United States Activities Board

Need for Issuing: Position on Proposed Federal Regulations and Plans

Intended Use: U.S. Congress, Government Agencies, Media, and Industry

Initial Distribution: United States Activities Board

The Institute of Electrical and Electronics Engineers, Inc. (IEEE) has adopted a position on Freedom of Technology Transfer ~~(attached)~~. It is the position of the IEEE United States Activities Board (USAB) that the situation in the United States in this regard can be substantially improved. U.S. government regulations concerning technology transfer, and their implementation, should be designed to foster U.S. leadership in scientific and technological development, to increase innovation and productivity, and to support and maintain essential national security. The central thrust of U.S. government policy should strongly encourage technological growth at a rate that ensures U.S. technological eminence, and should not impede such growth through excessive limitations on the flow of information within the technological community. USAB strongly advocates the significant changes in current practices described in the following paragraphs. Industry, academia, individuals and the nation will benefit from these changes.

An underlying, coherent policy, along with consistent, uniformly applied, and readily implementable regulations on technology transfer should be established, replacing or amending the several now in existence (e.g., ITAR, EAR, Department of Energy regulations,

ENTITY POSITION STATEMENT

Subject:

TECHNOLOGY TRANSFER IN THE UNITED STATES

Approval by IEEE Entity:

E. J. Doyle	E.J.Doyle	Vice President Professional Activities	11-17-82
Signature	Name	Title	Date

Inventions & Security Act, etc.) Responsibilities for clearly defined control and implementation of technology transfer limitations should be established, including the assignment of lead responsibility for each type of limitation of technology to a single administering government agency or office. Documentation of these responsibilities will correct the perceived splintering of responsibility among the Departments of State, Commerce, Defense, and Energy, with input from several independent agencies (CIA, NASA, NSA, etc.). Most importantly, any limitations on technology transfer should be reduced to the absolute minimum requirements of the nation's interests, and be administered in an efficient, equitable, and intelligent manner.

The following guidelines are recommended:

- Necessary restrictions should be focused upon leading-edge technologies, not necessarily products, and further be limited to those particular technologies that are critical to national security. Any limitations imposed must be specific. Broadness permits a wide range of interpretation that creates confusion, uncertainty, and the possibility of abuse.

- The government should solicit the professional counsel of knowledgeable non-government individuals in establishing joint advisory entities to evaluate specific technology items from the viewpoint of industry, commerce, and national security, and to review periodically these value estimates. Individuals who create the technology are well equipped to advise government on the importance of specific technologies and the appropriate, limitations on their dissemination.

- Technology readily available within other nations should not be included in any restrictive U.S. regulations. Counsel as to what technologies are in fact readily available in the world should be sought from the advisory entities proposed herein. The United States government should actively seek to expedite the processes by which multinational agreements on joint limitations are reached.

- Decisions on clearances or denials should be rapidly obtainable in advance of any proposed transfer. The time-frame of these decisions should be commensurate with the requirements of industry, technical publications and professional meetings.

- Both the regulations and their application to the transfer of technology should be appealable in a direct and rapid manner. The appeal process should provide for professional counsel from knowledgeable non-government individuals through the advisory entities described herein.

- The administering government organization should be responsible for identification of potential damage to national security, including justification of such identification.
- Pre-release screening of technical information by government sponsored organizations should not be employed except in extraordinary cases. These cases should be selected only after consultation with the knowledgeable non-government individuals who constitute the advisory entities described herein.
- The engineering, scientific, and industrial community should be much better informed by the government than it now is as to areas of technology considered sensitive and the means employed by competitor or adversary nations for improper acquisition of such sensitive technology.
- Regulations should not discourage the participation of non-U.S. citizens in U.S. academic environments. Universities cannot be expected to enforce national security regulations unless explicitly required by a sponsor of a program that is accepted by the university. Admission to the U.S. for study should be granted according to appropriate immigration criteria.

It is the opinion of USAB that the adoption of the foregoing principles and guidelines will result both in the more rapid growth of U.S. technology and in improved national security.

IKER, Inc.

18 OAKHURST CIRCLE
PITTSBURGH, PA. 15215
(412) 781-6023

April 23, 1983

Senator John Heinz III
UNITED STATES SENATE
Washington, D.C. 20510

Dear Senator Heinz:

Re.: Renewal of the Export Administration Act.

Further to your letter of February 24, 1983 and consequent communications in connection with the above subject I was very pleased to learn that you, as chairman of the International Finance and Monetary Policy Subcommittee, have introduced legislation to correct some of the existing problems with the Export Administration Act and seeking our advice.

I have studied your proposed legislation and I would like to make some additional recommendations.

I believe, the main reason for our current control policy not serving either our foreign policy objectives or our exporters, as you stated, is that we have been struggling with the unfortunate symptoms without attempting to eliminate the causes or sources of those symptoms.

In ATTACHMENT A, to understand the reasons behind my recommendations, I have attempted to discuss some of the causes or sources of the unfortunate symptoms and I have tried to describe some of my observations during my numerous dealings with many types of people involved in our high technology export on both sides of the Iron Curtain.

In order to analize what is going on, we have to deal separately with those significant exports of high priced (or large quantity) controlled high technology commodities or contracts which cannot be handled by blackmarket operators, whose proposed end-use and end-user can be verified and whose end-use can be monitored after sale. The U.S. public hears about these exports only through the newsmedia because the exporters of these commodities are usually large powerful corporations and their arguments with the administration always hit the headlines. Our export administration is structured to deal with such cases and, while one can argue about the political or economic wisdom of some of the Export

Administration's decisions in connection with such exports, one cannot complain about the U.S. Export Administration's method for processing the related export license applications.

On the other hand, the bulk of our high technology exports consists of smaller value commodities produced by a large number of various small sized manufacturers and exported either directly or through third parties. Unfortunately, the OEA is applying the same complex and elaborate method, which is structured for controlling the exports of the above described large value commodities or contracts, to the processing of the export licenses related to these large number of smaller value commodities as well. Naturally, the result is rather disappointing.

The STATEMENT BY ULTIMATE CONSIGNEE AND PURCHASER is one of the strangest forms, as far as the small value controlled commodities are concerned, under the existing circumstances. Can we expect each foreign end-user who (occasionally) purchases some relatively small value U.S. equipment, parts or components, etc., to understand those complicated English sentences on that statement? Has he to purchase (and probably have it translated) and study the heavy volume of the complex U.S. Export Administration Regulations? Apparently, he needs to do this because he has to sign on this statement that he will not resell or dispose of, etc. the commodities he intends to purchase in a manner "contrary to U.S. Export Administration Regulations" to any person if there is a reason to believe that it will result directly or indirectly in disposition contrary to U.S. Export Administration Regulations. He must also purchase those Regulations to learn to whom the Regulations would allow him to sell his own products which would use those U.S. components, etc.

Because the truthfulness of these STATEMENTS BY ULTIMATE CONSIGNEE AND PURCHASER is very rarely checked (if they can be checked at all as they are intentions only) the result is that the prospective (even the honest) end-user often signs as many blank forms as the purchaser (usually a middleman) wants him to sign and lets the middleman struggle with filling them out later (why would he waste time with it, getting those goods out of the United States is not his job, it is his supplier's job, the middleman's job).

As the Western European middlemen usually also deal with Eastern European customers, they have the opportunity to fill into such presigned certificates the requirement of their Eastern European customers as well. Many of the business people abroad consider our U.S. export licensing procedure as unreasonable, therefore we cannot expect much cooperation from them. Even if the end-users sign the completed statements, their only concern is to get the goods as fast as possible, so they are usually willing to shape their statements to aid such an intention of the middleman.

Because in case of these large number of smaller value controlled commodities neither the correctness of the statements presented on the STATEMENTS BY ULTIMATE CONSIGNEE AND PURCHASER in connection with the end-use and the end-user is (or even can be) verified, either before or after the sale, nor the exporters' claim in connection with foreign availability can be ascertained due to lack of available reliable information at the OEA, some of the individuals involved in the processing of the export license applications are often reluctant to make any decision at all, hence there is a delay, uncertainty and injustice in connection with the approval or rejection of such applications. Even if a license is approved finally, the customer often cannot wait until a positive decision is obtained, because delay may be very costly for him, and therefore he is forced to shift his order to another manufacturer (Western European or Japanese) or will never return for another order for U.S. made goods.

A U.S. manufacturer (or exporter) who has spent a lot of money on obtaining an order from Eastern Europe, etc. with the natural expectation that he would be able to deliver that order fast (as all the signs, including his contacts with the OEA, indicated that he should not expect problems with receiving a license) will lose interest in searching for new export orders if his dealings with the OEA become costly, especially if he loses the order due to a delay in the issuing of the related export license or due to an unjustified denial of the license.

Our Western European and Japanese competitors in the CoCom countries also have an export license requirement in connection with nearly all the items we have but they do not seem to have the same delay and uncertainty in the processing of their validated export license applications as we have in ours. Hence, in spite of that most of the Eastern European, etc. end-users prefer U.S. made products, they are forced to go for the Western European or Japanese made similar products, even if such Western European or Japanese goods are not as good and as cheap as ours, because the waiting and the uncertainty can cost them much more than the difference in price and quality.

Another important factor is that the overseas end-users prefer to deal , if they can, with one single non-biased local (or semi-local, who often visits them) supplier only, whom they can trust and who provides them free of charge technical help in finding and selecting the most suitable products and manufacturers for their overseas requirement because it is very difficult and expensive for them to search for suitable equipment overseas, to deal with and chase a large number of overseas suppliers, banks, etc. separately even if some of them might have a local representative. It is much simpler and cheaper for them to issue one single order (either in local currency to such a supplier, or in foreign currency to the overseas partner of such supplier) covering all their requirement for a specific project.

Such a (local) supplier (in the European country) usually pairs up with a U.S. supplier who deals with the other U.S. manufacturers and users. Such a pair can be very effective, as they usually maintain daily TLX and voice communication between themselves, each deals with his contacts locally and, in general, operates as a local business. Such pairs, through their technical skills and established technical, business and financial arrangements, can eliminate the difficulties which normally exist in overseas communications and foreign trading. They can, at a relatively low cost, make the business dealings as simple as if the overseas customers were located within the United States.

Such pairs are very beneficial to the United States as they ensure that all the import requirements of their foreign end-user customers are satisfied with U.S. made commodities, so they sell overseas the products of even those U.S. manufacturers who themselves do not make any promotion of their own products overseas. Such a pair can obtain a U.S. distribution export license (in case of many countries) covering the majority of the goods they supply. hence they can eliminate even the delay in the processing of the export licenses. The U.S. side of such a pair could be, for example, a U.S. electronic system manufacturer who pairs up with his overseas distributor and tries to supply all the requirement of his overseas customers in that country, even if a customer intends to make the system assembly work partially or completely himself, to ensure that such customer does not go over to his foreign (overseas) competitors and stay with them.

Unfortunately, such pairs often run into problems with other U.S. manufacturers whose products they want to purchase and, with or without modification, to supply to the foreign end-user as part of a system or as part of a long list (the selected supplier must provide all the items on the list). The problem starts because, when the U.S. party of such a pair calls up another U.S. manufacturer and inquires about the price and availability of a controlled commodity, such a U.S. manufacturer often worries that the inquirer, especially in case of 220V requirement, might export that item in violation of the Export Administration Regulations and he, the manufacturer, might be accused of complicity in such a violation. Therefore, he will inquire about the destination of the goods.

If the inquirer, the U.S. party who is a domestic customer to such other U.S. manufacturer, admits that those products will end up eventually (with proper export license) in a specific foreign country, then the U.S. manufacturer is likely to try to treat the inquirer, in violation of the U.S. Anti-Trust Laws, not as a domestic purchaser but as one acting on behalf of a foreign purchaser and either will quote a high export price or refuse to sell to him anything at all, saying, that he, the manufacturer, has an exclusive representative in that country (to whom he needs to pay a commission) and the inquirer should contact that representative abroad for price and delivery (the representative's price is usually exorbitant).

In both cases the high cost eliminates the use of that manufacturer's products in that complete or partial system, or even it might eliminate the entire contract for the U.S. party of the pair, and the overseas party of the pair might be forced to move the entire requirement to a Western European system manufacturer (competitor of the U.S. manufacturers) in order that, at least, he does not lose that customer.

This is a rather foolish attitude for the U.S. manufacturer because his in-country exclusive representative (many of such representatives are very useless) often will not even have an opportunity to bid for supplying his principal's products for such a requirement directly as he would not be able to supply the entire package (complete or partial system or a long list of items produced by various U.S. manufacturers) and as he did not assist the end-user with the creation of that requirement. Also, the U.S. manufacturer is not responsible for paying a commission to an overseas representative when the U.S. manufacturer sells the goods to another domestic U.S. company.

So it is not always the fault of the OEA that we lose our export business, often it is caused by the U.S. manufacturers themselves with their own foolish attitude (over-protection of their useless representatives). They not only lose the business but they violate the U.S. Anti-Trust Laws and eliminate the possibilities that your Foreign Trading Company Act could succeed as these pairs could perform the most successful export trading activities if their activities would not be hampered by other U.S. manufacturers. So the success of your Foreign Trading Company Act very much depends on whether or not you can eliminate the above described behaviour of some of the U.S. companies by legislative action.

Probably one of the most important basic problems, in case of smaller volume items, with our export control method is that the Commodity Control List (CCL) of the Export Administration Regulations often lists the controlled commodities not in terms of their most significant parameters (listed as part of their specifications and presented on their published datasheets) but in terms of, for example, how they were manufactured, in terms of the product of several parameters (some of them not only not published, but never measured by some of the manufacturers of those equipment), etc. Therefore, not only those business people who are exporting such equipment, but even the technical people frequently do not understand whether or not a validated export license is required. To most of the marketing people the goods they sell usually mean nothing more than a model number, price and terms and conditions of sale.

The next most important problem, in case of the smaller value items, is that a U.S. exporter never knows in advance if he can deliver an order for controlled commodities, and when, after he had spent a lot of money on obtaining an order. He cannot check it in advance with the OEA because the OEA is too busy with shuffling the actual license applications and cannot deal with inquiries, so the OEA will advise him to obtain an end-user certificate from the potential customer and submit a proper license application (previously an exporter could not submit an application unless he had a firm order), which has to go through the entire process, in order to learn that he would or would not be able to deliver such an order if he received one.

Unfortunately, many of the end-users in controlled countries are not willing to give a written advance notice to the OEA about those commodities which they intend to purchase through the blackmarket, unless someone ensures them that a license is likely to be granted within a reasonable time, so the OEA enforcement people would know what sale to look out for. Therefore, most of the end-users in the controlled countries go straight to the blackmarket. Other reasons for such a move are described in Attachment A.

Apparently, our task ought to be to develop an improved export control method, in connection with the smaller value items that represent the bulk of our export, which would serve our foreign policy objectives without destroying our politically and economically important high technology export. This task is not very difficult if we can overcome the resistance of some interest groups. We would need to do only the following:

1. We have to make the people everywhere more conscious of what specific commodities are controlled. The Export Administration Act should make it compulsory for every U.S. manufacturer to include in the model numbers of his products clearly identifiable codes such as (CD) or (CA), etc., (in front of the regular model number, for example, if the export of such products is controlled and the code (G) if the export of such a product is not controlled. (See later the meaning of this code).

2. We have to determine which are those controlled commodities whose end-use and end-user can be verified before and after sale in any quantity due to its military significance or large cost, or in quantities larger than specific quantity limits due to their significance in such quantities. For the export of such commodities the existing validated export licensing method with some improvement should be maintained.

3. The requirement for a validated export license should be replaced by a special type of Shipper's Export Declaration (listing the commodities in a suitable manner) in connection with the export to CoCom countries of controlled commodities not covered under para 2. above. A copy of each of these special Shipper's Export Declarations would be collected by U.S. Customs, would be computer processed by the OEA and reported to the Export Administration of each specific CoCom country, where the commodities should have been received, on a yearly basis listing the reference numbers and enclosing copies of these special Shipper's Export Declarations.

4. This special Shipper's Export Declaration would not mean any extra work for the exporters as the exporters have now to fill out a separate copy of the Shipper's Export Declaration for the controlled commodities, anyway.

5. Two copies of these special Shipper's Export Declarations would travel abroad with the shipments. One copy would be collected by Customs in those receiving CoCom countries on behalf of their Export Adminstration and the other copy would go to the end-users (or distributors).

6. Everyone in the CoCom countries, who had during the year any U.S. controlled commodities, would need to send a simple report at the end of each year to the Export Administration of his own CoCom country enclosing the delivery copies of the special Shipper's Export Declaration he received with the shipments. This simple report would list stock position at beginning of the year, the items he received during the year, usage or resale during the year (also enclosing his copies of the Resale Certificates) and stock at the end of the year. The CoCom country's Export Administration would

only need to match copies of the special Shipper's Export Declarations and of the Resale Certificates received from the sellers and from the buyers. Any discrepancy would show off. This very simple system would decrease the unauthorized flow of controlled high technology to the controlled countries. The report would be subject to audit with severe punishment for providing false information.

7. The U.S. enforcement people cannot check inside the CoCom countries the whereabout of U.S. made controlled commodities exported to the CoCom countries, unless the local enforcement people in the CoCom countries provide a full cooperation, which they do not at this moment (see ATTACHMENT A). However, if the CoCom agreement is raised to a treaty, then we would have a better opportunity for verification.

8. In the non-CoCom countries, anyone who voluntarily agrees to a yearly reporting (as described in connection with the CoCom countries above in para 6.,except reporting is made to the U.S. Embassy) and to the possibility of an on-sight inspection by the U.S. manufacturer/supplier or a U.S. Embassy personnel for the verification of the yearly reports (if selected for audit, with severe consequences for supplying false information and with suitable consequences if declared end-use is changed to another end-use that would not have permitted the purchase of that specific equipment) would be classified into a pertinent end-user category between categories A to E. Those who do not agree to the voluntary reporting would be classified into catogory F which would have the same limits as the limits for validated export license requirement are specified now in the existing CCL.

9. The CCL would list the controlled commodities in terms of some of their selected (significant) published performance parameters (specification items) indicating for each parameter the maximum numerical value limits in case of each end-user category between A and F. Hence any potential purchaser or seller could determine in advance what commodity with a specification not exceeding those maximum numerical value limits could be delivered, without submitting a validated license application to the OEA, to a specific end-user categorized into a specific end-user category.

10. The various types of end-uses would also be classified into a specific number of groups and, in case of each commodity, the CCL would indicate that fraction of a category by which the end-user would (for the purpose of purchasing that specific commodity for that specific end-use) move towards

a more advantageous category if the end-use would belong to a specific more advantageous end-use group. For example: at present any end-user for any end-use can purchase an oscilloscope up to a 100 MHz bandwidth according to the CCL. Hence 'Category F' would be 100 MHz. An end-user in Category C might have a 250 MHz bandwidth limit in case of the least advantageous end-use group. With the most advantageous end-use group this end-user might be able to purchase an oscilloscope with a 400 MHz bandwidth without seeking the OEA's approval.

11. If an end-user would need an equipment with a performance higher than his end-user and end-use category/group classification allows him to purchase, then the U.S. supplier could submit a validated export license application to the OEA explaining the circumstances including proof of foreign availability (if such issue is pertinent) and requesting an individual licensing decision.

It is visualized that our Export Administration would function as follows if the recommendations in this letter are accepted:

(1) The OEA in cooperation with the other departments of the Executive Branch, the Congress, Industry Associations and CoCom partners would determine the type and level of technology whose export should be controlled.

(2) The pertinent Industry Associations, in consultation with the OEA, would work out a proposal for the text of the CCL within the guidelines determined by the OEA as described in (1) above and would submit that proposed text of the CCL for approval to the OEA which would approve it in cooperation with all pertinent departments of the Executive Branch and the CoCom partners.

(3) The CCL would indicate in case of each controlled commodity entry the specific quantity limits, above which a validated export license application would have to be submitted to the OEA in connection with any export to any country. Such an entry on the CCL would also list the largest numerical values for the selected published parameters of the commodity in case of each end-user category and the influence of the end-use groups on the end-user categories, as explained earlier, to describe the highest specification of a commodity which could be exported under such an entry without submitting a validated export license application to the OEA.

(4) After approval of the CCL each manufacturer or supplier who offers for sale at least one controlled commodity would require to list all his controlled products for submittal to the OEA via his Industry Association, which would check the correctness of his list before submittal. In case of

each controlled commodity listed, for each parameter listed under the pertinent entry of the CCL the lowest end-user category (that has a numerical value larger than the numerical value of the actual related published parameter of the listed commodity) would be selected. The lowest end-user category of these parameter by parameter selected end-user categories would determine the end-user category to be included in the model or catalog number of that controlled commodity.

The above recommendations would eliminate all the visible shortcomings of the present method of export licensing. The OEA already classifies the export license applications according to the level of approval they require. The above recommendation is for not more than the approval in advance of those exports whose license approval is normally decided by the OEA on the basis of precedence after several weeks of expensive paper shuffling. If these recommendations are put into practice the end-users and exporters would not only know in advance whether or not a specific sale could be made without delay and uncertainty (in case of the bulk of our exports), but the hitherto unreliable end-user statements, on which our existing export licensing process is based, would become reliable and verifiable, the volume of our export would grow and the end-users would try their best cooperation to be classified into the highest possible end-user category. Hence our export control would achieve its original goal.

I noted that you are proposing to shift the responsibility for enforcement from Commerce to Customs. I have contacted the enforcement people for their opinion. They raised a valid point to which I would like to draw your attention.

You propose to spend more money on collecting more accurate information in connection with foreign availability in order that the exporters' claims in connection with foreign availability could be verified without a long delay. This is an excellent and a very necessary step. This information can best be obtained by visiting the U.S. manufacturers as they keep usually a file on their competitors and they also know if their foreign competitors' claims on their datasheets are true or just a wishful thinking. Besides, the visiting of the domestic and foreign exhibitions and attenting the related conferences by U.S. Commerce employees posing as businessmen (potential customers) etc. could result in the easiest collection of the required information.

Because the same U.S. manufacturers have the best information and gossips about the alleged violations of the Export Administration Regulations by their competitors or customers, this information could also be obtained at the same time when foreign availability information is sought. Besides, only the Commerce employees have direct access to the OEA's computer and to the distribution export license files, which contain a significant amount of very valuable information and are treasure-troves to those who know what to look for to check out the gossips, etc.

Therefore, I would like to recommend that Commerce would maintain a group of highly skilled investigators who would not only collect the information in connection with foreign availability and the alleged violations of the Regulations, but would search for violations, initiate, coordinate and supervise specific investigations to be or being carried out by Customs, etc.

Finally, I would like to request that you amend the Export Administration Act in such a way that a U.S. manufacturer or supplier would violate the Act if he would prevent another domestic U.S. corporation from bidding for an overseas contract or if he would cause such a U.S. person (corporation) to lose a foreign order or to suffer any other losses as a result of his refusal to sell to such a U.S. domestic corporation his products which he regularly offers for sale to other U.S. domestic customers, or as a result of charging such a U.S. domestic corporation a price higher than he charges to other U.S. domestic customers.

A statement by a domestic U.S. supplier on his quotation and invoice to another U.S. domestic customer stating that the specific commodities shown on the quotation or invoice are listed on the CCL would free the seller from any responsibility in connection with the violation of the Export Administration Regulations by that U.S. domestic customer or subsequent purchaser.

If such a U.S. manufacturer (seller) sends a copy of his invoice to the OEA, he could not be accused of any complicity or any knowledge of any subsequent violation of the Export Administration Regulations. Such invoices would be a treasure-trove for the commerce investigators.

I sincerely hope you will find the above recommendations appropriate for including them into your amendment of the Export Administration Act in order to improve the efficiency of our existing export control operations, the volume of our export that, in turn, will create more badly needed jobs and the chances that they will serve our foreign policy objectives.

I am very pleased to discuss the above recommendations in more depth with you and to assist you with preparing the text of the resulting amendments to the Export Administration Act.

You may consider this letter with Attachment A as part of your public hearings and publish it (probably after some editing, as I have not had time to do that).

I look forwards to hearing from you.

Sincerely,

IKER, INC.

I Kerenyi

Imre Kerenyi, President

IK/ij

Encl.

IKER to Senator John Heinz III
ATTACHMENT A. April 21, 1983

ATTACHMENT A

The only justification and excuse for maintaining a cumbersome individual export licensing procedure in the United States is that we are to base the individual export licensing decisions on the end-use and end-user in each specific case. This method works well in connection with multimillion dollar contracts in which cases the end-use can be established and verified before and after sale, however it is a complete failure as far as smaller items, which represent the bulk of our export, are concerned.

One of the reasons why our export licensing procedure is a complete failure in connection with smaller items is that most of the foreign end-users in friendly countries do not understand and are not interested to learn how to complete our end-user certificates, etc., or to familiarize themselves with our unclear and extensive regulations. They usually sign as many blank end-user certificates as the salesman (usually the European middleman, etc.) wants them to sign and let him to complete the rest of the forms and handle the export license applications, which they consider as not being their business.

As most of the European middlemen, especially in Austria, Germany and France, etc., are also involved in trading with Eastern Europe, this provides them an excellent opportunity to fill into such presigned blank end-user certificates any number of items they need for resale to an Eastern European purchaser and to purchase those items from the United States with a validated export license. Besides, it is not difficult for them to find a friend who signs such a certificate, for some compensation, as nobody ever checks the correctness of those certificates.

The Marxist countries are not adversaries of the industrialized free market economy countries because they have some territorial claims or similar complaint against them. They are adversaries because they claim that the political and economic system of the free market economy countries exploits the workers and it is their moral duty to liberate the workers from the capitalist exploitation.

Marxists have taken the first country, Russia, by manipulating a series of bloody revolutions when the Russian people were tired and bitter of being engaged in a hopeless and terrible war. Afterwards, they closed the Russian borders and consolidated their power by means of eliminating those who were not properly supporting their cause. They created a proletar dictatorship with a "state capitalist" economy (they call it socialist) in which those who run that system claim to act for and on behalf of the people. They preach that all means to achieve their aim domestically and internationally are justified and noble because their aim is noble.

Hitler gained power in Germany by eliminating his Marxist competitors for power and promising to correct the injustice made by the Versailles peace treaty at the end of World War I. So Hitler, when he felt successful and strong and corrected the injustice of the Versailles peace treaty by force, decided to go after the nest of the Marxists to eliminate future problems. The United States allied herself with the Marxist nest and at the end of World War II not only Hitler was eliminated but the Marxists gained control over Eastern Europe.

In a democratic society, if the political or economic ideas of the elected leadership fail, they will not be reelected and someone else will have a chance to try to solve the existing problems in a different manner.

In a dictatorship, whether or not it is a rightwing military or a Marxist proletar dictatorship, the leadership will not and cannot give up the power in case of a failure of their economic system because they not only would lose the good life their power provides but they could lose their freedom or even their life due to the sharp and hateful polarization of the population. Therefore, they have to find some scapegoats and a sort of future noble aim, which can be used as a driving force, for which a temporary suffering by the people can be justified.

In those countries, where dictatorship exists now, people never experienced anything else. They were always ruled by someone(s), either the king, etc., who ruled by the blessing of the God or Gods with the help of a selected group of people or a military or other dictator who grabbed power by force and ruled in a similar manner.

A dictatorship can be successful, if it has a solid economical system, because it can minimize the boredom of the people, especially of the youth, by occupying the free time of the people with paramilitary entertainment and nationalistic, idiological or other political movements. In contrast, in an open democratic society, while most of the intelligent people use up their free time with trying to make more money and to obtain more education, many of the less educated people, especially some of the youth, are bored and can easily become the prey of Marxist agitators and of those who herald violence, because violence and sex are the basic born-in characteristics of human beings and it is kept under controls only by education and fear of punishment or possible suffering.

The Marxist (state capitalist) system has turned out to be a complete failure economically because such centrally planned and controlled system lacks the incentives, available in the free market economy, for individuals to work hard, to produce, and to build up an economical independence and the associated economical and political power.

In order to retain power, the Soviet leadership has to cover up the low standard of living resulting from the failure of the Soviet economical system, has to justify the need for the domestic repressive political system and has to keep the people occupied at all times.

The solution is to remind the Russian people continuously what losses of life they suffered during the German invasion, tell them that worse will happen to them unless they deprive themselves from the enjoyment of decadent consumer goods in order to concentrate on strengthening their military and to agitate and support the exploited people worldwide against the capitalist/imperialist exploiters in order to destroy the capitalist/imperialist beast in its own cave by its own people before it could attack them. Through organized daily meetings, controlled media and exercises they pump these ideas into the heads of the people in the Marxist countries.

The Marxist economy is unable to produce the technology required to keep up with the technological progress of the free market economy so their way to obtain the badly needed high technology required to strengthen the military is to find some people in the free market economy countries who are either willing to supply such badly needed technology for some extra money or who are Marxist sympathizers and willing to steal it.

As in our free market capitalist open society we all have to earn our own living by hard work (naturally, there are some exceptions), we have no idiological motivation and many of us often have an urgent need for short term funds, it is always easy to find someone who knowingly or unknowingly will sell some secret or critical technology to our Marxist adversaries either in order to obtain some badly needed funds or just due to his sympathy for the Marxist cause.

Lenin properly observed; the capitalists will sell the rope to be hanged with. Hence, for example, our adversaries do not need to spend a fortune on military research and development, they only need to build up "suitable access channels" to our research and development facilities and they can obtain our R & D results at a fraction of the cost it would cost them to carry out such research and development program themselves.

Also, it is not difficult to find some so-called Marxist sympathizers in the free market countries as the arrogancy of some of the bureaucrats and others in powerful positions always produces some bitter and unhappy people who are out for revenge and only the Marxist agitators and spies offer them such an opportunity on a short and long term basis.

So the Soviets have been able to copy most of the technical achievements of the free market economy countries, sometimes they are not lagging much behind us as they are obtaining our test results on our critical military projects even during the development stages.

A few years ago the free market economy governments went along with the idea of detente assuming that if we manage to open the Iron Curtain by providing some limited technical help by establishing cultural connections and by other cooperation then the Russian people will be able to see our high standard of living and would demand the same for themselves. So this would force the Soviet leadership to spend less money on armament and more on the improvement of their economical system which would remove the source of the existing Soviet behaviour in the international arena.

Unfortunately our politicians did not realize the earlier described reasons for Soviet behaviour and most of the technology we supplied under detente was diverted to strengthen the Soviet military and the loans we provided for badly needed commercial purposes freed their own money for use in military projects and worldwide expansion of Marxism. So our support of detente, which must have been a Soviet idea, produced the opposite result what our shortsighted politicians expected.

Our politicians expected under detente that the Kremlin would halt her military buildup and her worldwide expansionist policies. On the other hand, the Kremlin, (which preaches that the political leadership of the non-Marxist countries are evil because they exploit the poor and the workers and it is the moral duty of the Soviet people, as the Soviet Union is being the first and the largest country already liberated from the imperialist exploitation, to provide a worldwide leadership and assistance to their comrades in the not yet liberated countries to free themselves from the capitalist/imperialist exploiters) understood under detente that the NATO countries will not use any threat against the Soviet Union, hence the Kremlin leaders will be able to concentrate more on their noble international liberation activities and NATO will not interfere with such noble activities.

The Western politicians should understand that the Soviet leadership cannot stop wearing the hat of the leaders of a worldwide Marxist revolution, in addition to the hat of the leaders of the Russian (expansionist) empire. These two complement each other very successfully.

We must not look at the Kremlin leadership as the bad guys. We should consider them (with the exception of the many opportunists, who jumped on their Marxist bandwagon) as the guys who believed in noble causes, carried out their noble struggle in a brutal manner (believing in the Machiavellian theory that the noble aim justifies the brutal means) and are unable to stop that struggle, i.e. they have to keep it on going by extending it worldwide, otherwise, due to shortcomings of their own domestic state capitalist economical system, all their achievement and their personal power would collapse. If they would change from war (revolutionary) atmosphere to a peaceful one their people would start to demand the same sort of standard of living we have in the free market economy, which their state capitalist system could not provide, hence their people would start to rebel against their leadership which would destroy their achievements and their capability to lead the people towards their noble aims.

The Kremlin leadership is desperately trying to improve its state capitalist economical system and uses the satellite countries as laboratories to try out various improvements. (This is rather convenient as any experiment that produces an undesirable result can be blamed on the imperalist/reactionist elements and can be eliminated without affecting the main body of the already liberated people in the Soviet Union). The main problem is how to give the people incentives for working harder within the state capitalist economical system.

Incentives motivate the people to work harder to obtain a better living, i.e.: economical power. Economical power in the free market economy always results in political power as well, which the Soviet leadership does not want to share, hence they are looking for a method that provides incentives to the people to work harder, that results in economical power only without the usually accompanying political power.

There are two basic types of power:

1. "Power through excellence", i.e.: the person has knowledge or capability or money, etc., so others need him, hence he can dominate the others; and
2. "Power through threat of destruction", i.e.: if you do not do what I want you to do I will destroy you by sabotage or non-cooperation, or violence, etc.

In Poland the Kremlin tested a system that was supposed to provide the people incentives for working harder by giving them a voice in the improvement of their working conditions. Unfortunately, that was diverted into the conventional "Power through threat of destruction" type of trade union activities, hence, instead of improving productivity and the economy, it was losing production time through strikes and was even copying the western trade unions by trying to become a political force opposing and criticizing the political activities of the government. So this experiment had to be discontinued.

In Rumania, they are trying to experiment with providing incentives for the workers by giving them some sort of partial ownership in the manufacturing organizations. It is too early to see any result.

In Hungary, they are testing the use of capitalist incentives (Lenin preached such a use) which are extremely successful, the Kremlin is praising it highly and presenting it to their own people as an example to follow. Hence, we should pay a special attention to this Hungarian experiment, it may be that the future form of the Marxist systems is being shaped in Hungary and we might be able to help to shape it.

The Soviet leadership is careful not to be caught directly in the violation of our laws, including our export administration laws. Therefore they use a chain of intermediaries for purchasing our controlled high technology without the approval of U.S. Export Administration. One intermediary might be situated in one of the satellite countries and the others might be either in Western Europe or in some third world countries.

In order to understand the operation of these intermediaries one needs to analize what opportunities exist for the intermediaries and for what reasons.

The satellite countries are run by regents whose main job is to maintain a Soviet type system and to carry out faithfully the orders of the Kremlin. Besides that, they are relatively free to organize their own "shops". According to Marxist theory, in a state capitalist (Marxist) system everything is planned in advance and the so-called capitalist slavedrivers (well paid administrators who ensure maximum performance by the workers and the safety of the capitalist owners' property) are replaced by very detailed recordkeeping systems which are subject to inspections by various different government organizations. (The work of an inspector is inspected by other inspectors from different organizations).

The only business transaction which cannot have a record, (hence an unscrupulous buyer could have the opportunity to claim that he had to pay several times the regular prices in cash and could stick away the money he did not pay in a Swiss or other western bank) is the purchase of controlled western high technology on the western blackmarket.

In order to make such opportunities for the unscrupulous satellite country foreign traders to be the most lucrative, their domestic end-users and the western foreign suppliers must be separated. It is known that foreign trade in those countries is made, by law, a state monopoly and the foreign traders make the separation of the end-users and western foreign suppliers as perfect as possible.

There is an apparent incentive for such foreign traders to make the end-users to accept that most of the electronics, etc. have to be obtained through the blackmarket. As the high prices can be passed to the customers without the fear of competition, those people at the end-users, who are offered a share of the loot, should have incentive for accepting the premise of the foreign traders that their requirement could only be obtained through the blackmarket.

The second intermediary is usually situated in Western Europe. He purchases the goods from the United States directly or indirectly, usually with a license backed by improper end-user certificates, and resells them at a relatively large profit to satellite country foreign traders. The Western European governments cannot have incentive to cooperate with the United States government to stop such activities as such actions result in net dollar earnings for their countries and provide an incentive for the powerful and dangerous eastern neighbor to maintain the independence of their countries in order to provide a free base for the blackmarket dealers.

Because of this situation a U.S. manufacturer who tries to sell his goods at low price directly in Eastern Europe (promising to try his best to obtain an export license) might not get much success in receiving a direct order but he might get a direct or indirect order for the same goods from a Western European purchaser, or from a U.S. domestic purchaser.

It is also rather unfortunate that the unanimity requirement for the interagency committee for making a positive licensing decision could provide a cover for a corrupt or a Marxist sympathizer U.S. government employee, who is cooperating with the Eastern or Western European blackmarket operators, because his role would need to be just to act as a concerned U.S. patriot who wants to make sure that no license is issued unless the granting of the export license is found to be absolutely safe and harmless to the United States in everybody's mind involved in the licensing process after a lengthy examination of each case, i.e.: to hold up the processing of the license application of those U.S. suppliers, whose direct exporting intention would undermine the effort of the blackmarket operators in directing most of the Eastern European requirement through the blackmarket.

Such delays justify the Eastern European purchasing agents in avoiding the direct low-cost offers of the U.S. manufacturers and purchasing most of their requirement via the blackmarket. Such moves, unfortunately, not only result in a loss to the U.S. economy, but, because the U.S. government does not check the blackmarket effectively, the large profit of the western blackmarket operators on even non-blackmarket items encourages them to handle even the most sensitive military items without making exorbitant mark-ups which otherwise could dampen the flow of such goods.

The experimentation with capitalist incentives and profit is a great success in Hungary. Even the technical people of the end-users are after profit, as their compensation depends on the company's profit, and trying to establish direct access to the U.S. suppliers for low cost direct purchases. They try to separate themselves from those activities of the foreign traders which are connected with purchasing commodities for resale to the big brother. Therefore, they want to offer the U.S. suppliers free access to their work and to the embargoed equipment they would like to purchase in exchange for a more realistic treatment of their requirement by the export licensing people, i.e.: the export licensing people could operate as they were set up to do. The end-user certificates would become meaningful and the end-uses could be ascertained in such cases.

The above trend would result in less lucrative business for the western blackmarket operators which would force them to increase their prices for the critical items or go out of business. It would also result in a separation of the genuine Hungarian commercial business from the resale business to the big brother. With such a separation it is likely that we could get the cooperation of the Western governments to round up such clearly identifiable activities.

IK/ij